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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 507

INTERSTATE COMMERCE COMMISSION, THE WIL-LETT COMPANY OF INDIANA, INC., AND THE PENN-SYLVANIA RAILROAD COMPANY, APPELLANTS

VS.

HARRY A. PARKER, DOING BUSINESS AS PARKER MOTOR FREIGHT, REGULAR COMMON CARRIERS CONFERENCE OF THE AMERICAN TRUCKING ASSOCIATIONS, INC., ET AL.

No. 508

THE UNITED STATES OF AMERICA; APPELLANT

vs.

HARRY A. PARKER, DOING BUSINESS AS PARKER MOTOR FREIGHT, REGULAR COMMON CARRIERS CONFERENCE OF THE AMERICAN TRUCKING ASSOCIATIONS, INC., ET AL.

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF INDIANA

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In the District Court of the United States for the Southern District of Indiana, Indianapolis Division

Civil Action No. 781

HARRY A. PARKER, D/B/A PARKER MOTOR FREIGHT, PLAINTIPP

UNITED STATES OF AMERICA, DEFENDANT

Complaint

Filed Feb. 21, 1944

1. This suit is brought under Title 28, U. S. Code, Section 41, subdivision 28 and Sections 43, 44, 45, 46, 47, 47a, and 48 and under Title 49, U. S. Code, Sections 17 (9) and 305 (g) (h) (being Sections 17 (9) and 205 (g) (h) of the Interstate Commerce Act), to enjoin, set aside, annul and suspend a decision, order, or requirement of the Interstate Commerce Commission entered on September 25, 1943, and the final order denying plaintiff's Petition for Reconsideration dated February 8, 1944 (copies of which are attached hereto as Exhibits A and B), in a proceeding pending before the said Commission entitled The Willett Company of Indiana, Inc., Extension—Fort Wayne—Mackinac City, Michigan (Sub No. 6).

2. The order in the said proceeding is based on an application wherein the Willett Company of Indiana, an Indiana corporation, seeks the right to establish some seven different operating divisions through the use of motor vehicles. The said Willett Company is a subsidiary of the Pennsylvania Railroad Company. The several separate operating divisions include routes extending from Grand Rapids, Michigan to Petoskey, Traverse City and Mackinac City, Michigan. These routes will parallel the routes served by this plaintiff and by other motor carriers and will permit the applicant to serve points on said routes now served by this plaintiff. Competition will be open and direct between the Willett

Company and this plaintiff.

3. The Parker Motor Freight is a motor carrier operating under authority of the Interstate Commerce Commission. Harry Parker of Petoskey, Michigan is the owner operating under the name of Parker Motor Freight. It operates principally from Grand Rapids to points north over the routes, or serving the

points involved in that part of the application. The plaintiff is in regular operation in interstate commerce and will be directly affected by the new competition brought into being by the order

in question.

4. The Willett Company of Indiana is an Indiana corporation claiming to have its principal place of business at Indianapolis, Ind. On or about September 8, 1941 the applicant filed an application with the Interstate Commerce Commission seeking a certificate of public convenience and necessity authorizing an extension of operations in interstate or foreign commerce as a common carrier, by motor vehicle of general commodities between Fort Wayne and Mackinac City over seven connecting routes. The precise description of the highways and the scope of the authority sought is more particularly set out in the order about which complaint is now made and in documents attached to this bill of com-. plaint. The application seeks authority to operate over highways serving points being served by these plaintiffs and by a number of other motor carriers. The matter was duly scheduled for hearing. On February 10th and 11th, 1942, the applicant presented its proof and the matter was then adjourned. Hearings were resumed on June 1st and continued on June 2nd, 1942.

3. The matter was heard by a Joint Board composed of representatives from Indiana and Michigan. Because of the inability of the Joint Board to agree, the matter was then referred to an Examiner who made a report served on September 14, 1942. This proposed report and order granted the applicant all that it sought. Exceptions were then filed by these plaintiffs under date of Octo-

ber 29, 1942. On September 25, 1943, Division 5 of the Comntission handed down an order denying all of the exceptions and objections we raised and granting the applicant all that it had sought in the original application. Proper extensions of time were secured and, in due coarse, these plaintiffs filed a petition for reopening, reconsideration, oral argument and other relief. The applicant then made reply and the Commission issued its order denying our prayers for relief by its order dated February 8, 1944. This matter is now brought on before this Honorable Court because of the many errors of both law and fact to be found in the Division order of September 25, 1943, and its order denying our petition for reconsideration bearing date of February 8, 1944.

6. The applicant did not present evidence showing that the public convenience and necessity required the proposed operation. The evidence offered by the applicant dealt only with a claimed saving to its owner, the Pennsylvania Railroad, and with other subjects not germane to the issues on this type of an application.

7. The applicant did not present any evidence designed to prove that motor carriers already performing operations and offering service over the routes and between the points involved were or would be unable to furnish the service covered by the application. Instead, the applicant and its railroad owner admitted that they had no knowledge of the motor carrier service available over these said routes. They further admitted that they would not make use of any existing common motor carrier service even though such carriers could furnish a service equal to or superior to the service proposed by the applicant. The record is utterly barren of evidence which could prove that the proposed service is required for the public convenience and necessity, or that the proposed service could not be obtained through the use of carriers already operating over the routes and between the points involved on the seven different sections of the application.

8. The protestants in the case presented evidence in considerable volume showing that motor carriers operating over the routes and between the points covered by the application were in a position to and could furnish the precise service described by the applicant. The protestants presented un-

contradicted proof showing that some of them were performing precisely the same sort of service for another railroad and that there was nothing unusual or extraordinary about the service the applicant was seeking the right to perform. The protestants presented much proof to show that there was no need for the grant of a certificate to a new carrier and that the public convenience and

necessity did not require the grant of the certificate being sought.

9. The Commission, through Division 6 in its order of September 25, 1943, wholly disregarded all of the evidence presented by the protestants. The order contains many alleged findings of fact that do not have any foundation in the record. The Division order makes a number of findings of fact that are directly contrary to the only evidence in the record. The order also makes findings of fact on subjects not touched upon by any evidence in the record and then uses such findings as the basis for its order granting the certificate. The order, therefore, is not supported by the record and is contrary to all of the important and essential facts as shown by

the record.

10. The order of the Commission is based on improper and unlawful conclusions of both fact and law. The Division has determined many of the issues on the basis of evidence presented in other cases at other times in which these protestants took no part.

11. The order is based on a discriminatory application of the statute. The Commission has not applied the statute in determining the issues in this case in the same manner as it has always applied it to motor carriers not owned or controlled by a railroad. The Commission has arbitrarily and capriciously authorized the grant of a certificate to this applicant without requiring it to

or present evidence that there is no carrier already in the field capable of performing the proposed service but, instead, has applied a wholly improper and unlawful test and measure of proof. The order proposes to grant a certificate to the applicant because it is owned by the railroad for whom the service is to be performed and not because the service is actually required by the public convenience and necessity.

12. The Commission has applied tests that do not have anything to do with the grant of a certificate of public convenience and necessity. The Commission has applied tests prescribed only by the sections of the Act dealing with the issuance of authority to contract carriers, although the applicant here seeks a common

carrier certificate.

13. The Commission has refused to reopen the case to permit the introduction of proof by these and other protestants going to show that the shipper witnesses produced by the applicant had appeared and given testimony for improper reasons. The Joint Board who heard the case refused to permit us to introduce proof showing that the applicant's shipper witnesses had admitted to having appeared and testified for reasons having no connection whatever with public convenience and necessity. Such evidence would have shown that the shipper witnesses were biased and prejudiced and that they had admitted that they did not appear because the public convenience and necessity required the institution of a new service. This vital testimony would have destroyed both the credibility and weight, as well as the admissibility of the evidence given by applicant's shipper witnesses, but the Commission has failed and refused to even make note of our objection on this score. The order of the Commission is unlawful and defective because it does not contain proper findings upon many material questions of fact and law that have been raised and argued by these plaintiffs during the progress of the cause.

7 14. The order is defective and unlawful and constitutes an unreasonable and arbitrary exercise of power because the Division has substituted a refusal on the part of the railroad to do business with any existing motor carrier for the proof of public convenience and necessity required by the statute. The Commission has based its order on claimed facts and arguments not supported by the record. The Commission has wholly omitted to give any consideration to many controlling facts and to

the plain language of the statute.

15. The Commission, unless restrained, will within a short time issue a final certificate to the applicant. The said certificate will conform to the order of the Commission dated September 25, 1943, unless a temporary restraining order and a temporary injunction issues enjoining the enforcement or the taking effect of the said

order and unless that order is vacated, suspended, and set aside during the pendency of this litigation, these plaintiffs will suffer irreparable damage, injustice, and inconvenience and will find themselves confronted with unlawful competition against which they are afforded protection by the provisions of the motor carrier act under which all these proceedings are being carried on.

Wherefore, being without an adequate remedy at law and plaintiffs' relief being in this Court, and in order to prevent immediate and irreparable loss to plaintiffs, and great and irremedial damage to them, plaintiffs pray this Court for the following relief:

1. That process issue against the United States of America by

law.

2. That the Court, as soon as practicable after the filing of this complaint, call to its assistance for the hearing and determination of the issues raised by this Bill of Complaint two other Judges, one of whom shall be a Circuit Judge.

3. That this Court issue a temporary restraining order and temporary injunction staying and suspending the operation and effect of the Commission Orders of September 25, 1943,

and February 8, 1944, purporting to grant a certificate of public convenience and necessity to The Willett Company of Indiana, and that such temporary restraining order and temporary injunction further stay and suspend the order and the effect of the orders of the Commission bearing date of September 25, 1943, and February 8, 1944, referred to above, and enjoining any action on the part of the said Interstate Commerce Commission which would result in the issuance of a certificate, or of any authority to the said Willett Company of Indiana, Inc. as proposed in the orders complained of.

4. That a temporary restraining order and temporary injunction be entered herein restraining, enjoining, and suspending until the further order of this Court the operation, execution, effect, and enforcement of the orders of the said Interstate Commerce Commission bearing date of September 25, 1943, and

February 8, 1944.

5. That upon its final hearing of the cause, this Court adjudge the said orders of the Interstate Commerce Commission to be null and void and that it shall enjoin, set aside, annul, and suspend the whole of the said orders. That the Court adjudge the said orders to be without support in the record; beyond the statutory or constitutional power of the Commission; confiscatory and unreasonable and arbitrary and unjustified. That it further find that the application of the said order will result in confiscation of the property of these plaintiffs and will result in a taking of their property without due process of law.

6. That they be granted such other and further or different relief as the Court may deem proper in the premises.

K. F. CLARDY, K. F. Clardy, Attorney for Plaintiff, 712 Olds Tower, Lansing, Mich.

Dated at Lansing, Michigan, Feb. 15, 1944.

9 . [Duly sworn to by Harry Parker; jurat omitted in printing.]

10

Exhibit A to complaint

INTERSTATE COMMERCE COMMISSION

No. MC-2815 (Sub-No. 6)

THE WILLETT COMPANY OF INDIANA, INC., EXTENSION—FORT WAYNE— MACKINAW CITY, MICH.

Submitted December 17, 1942. Decided September 25, 1943

Public convenience and necessity found to require operation by applicant as a common carrier by motor vehicle, of general commodities, over specified routes, between points in Indiana and Michigan, serving points which are stations on the rail line of The Pennsylvania Railroad Company. Issuance of a certificate, subject to conditions, approved upon compliance by applicant with certain conditions.

Harry E. Yockey, Kirkwood Yockey, and Earl W. Munshaw for applicant.

Oscar Lindstrand for intervener.

Claude H. Anderson, K. F. Clardy, Robert DesRoches, Fred I. King, George O. Cowan, W. J. Guenther, and Frank C. Devlin for protestants.

REPORT OF THE COMMISSION.

Division 5, Commissioners Mahaffie, Rogers, and Patterson By Division 5.

Exceptions were filed by protestants to the order recommended

by the examiner and applicant replied.

By application filed September 8, 1941, as amended, The Willett Company of Indiana, Inc., of Chicago, Ill., seeks a certificate of public convenience and necessity authorizing extension of operations, in interstate or foreign commerce, as a common carrier by motor vehicle, of general commodities, between Fort Wayne, Ind., and Mackinaw City, Mich., over seven connecting routes between

the following termini: (1) Fort Wayne, and Grand Rapids, Mich., (2) Grand Rapids and Cadillac, Mich., (3) Cadillac and Mackinaw City, Mich., (4) Cadillac and Traverse City, Mich., (5) Cadillac and Falmouth, Mich., (6) Grand Rapids and Miskegon, Mich., and (7) Lake City and Manton, Mich., serving intermediate and off-route points which are stations on the rail line of The Pennsylvania Railroad Company as more fully described in the appendix hereto. Certain motor carriers operating in the affected territory oppose the application. The Pennsylvania Railroad Company, hereinafter called the railroad, intervened in behalf of applicant.

Applicant is now authorized to operate over routes that parallel practically the entire system of the railroad in Ohio, Indiana, and Illinois, serving stations on the rail line. These routes extend west from Bradford, Ohio, and Richmond, Ind., to St. Louis, Mo., and north from Louisville, Ky., to Chicago, Ill., and include a route between Richmond and Fort Wayne. By the instant application

applicant seeks to extend its operations over routes in Indiana and Michigan north of Fort Wayne so as to serve points on the Grand Rapids division of the Railroad. This grant of authority would allow applicant to round out its station-to-station service within the railroad's so-called western region by the extension of such service to points in Michigan.

Applicant was organized under the laws of Indiana in 1934. Its entire capital stock is owned by the American Contract & Trust Company, the latter being a wholly owned subsidiary of the railroad. On the date of the hearing applicant owned and operated 84 pieces of equipment composed of 41 tractors and 43 trailers, of which 12 of each will be used in the proposed operations. At that time it had 78 employees and intends to hire 11 drivers for the new operations. It has no terminal or dock personnel, but maintains a garage at Grand Rapids.

The operations under consideration would be limited to line-haul movements between stations on lines of the railroad. Applicant would render service which is auxiliary to, and supplemental of, the rail service in the transportation of less-than-carload freight. The general plan of this coordinated service is to transport such traffic by rail between key or break-bulk stations and thence by truck to the intermediate or way stations. Conversely, applicant, would collect freight at the way stations and transport it to the key stations for movement beyond by rail.

Generally speaking, the termini of each of the connecting routes are relatively large cities or important junction points on the main line of the railroad extending between Fort Wayne and Mackinaw City. Fort Wayne and Grand Rapids have been selected by applicant as key points. Points on the branch lines will be served by motor vehicles operating to and from Grand Rapids. The rail

service between Fort Wayne and Grand Rapids is frequent and the volume of tonnage is heavy, whereas the intermediate points receive less tonnage and less frequent service. This is also true at the points north of Grand Rapids with the exception of Cadillac, Traverse City, and Petoskey, Mich.

The estimated monthly tonnage in pounds between the given termini is as follows: Between Fort Wayne and Grand Rapids 935,870 pounds; between Grand Rapids and Cadillac 854,620 pounds; between Cadillac and Mackinaw City 498,420 pounds; between Cadillac and Traverse City 280,020 pounds; and between Grand Rapids and Muskegon 831,090 pounds. The distances by highway and rail between the termini are as follows: From Fort Wayne to Grand Rapids, 168 miles by highway and 142 by rail; from Grand Rapids to Cadillac, 106 miles by highway and 98 by rail; from Cadillac to Mackinaw City 154 miles by highway and 128 by rail; from Cadillac to Traverse City, via Lake City and Falmouth, 88 miles by highway and 47 by rail; and from Grand Rapids to Muskegon, 54 miles by highway and 40 by rail.

The railroad will continue to transport carload freight but will discontinue the operation of "peddler" cars in local freight trains. The substitution of motor-for-rail service over the considered routes will release freight cars for use in through-freight trains and will result in the elimination of over 61,000 car-miles per month and of approximately 860 car-days per month. For every freight car eliminated the necessity for switching that car in the yards will also be eliminated as well as the attendant expense. The proposed operations will expedite the movement of less-than-carload traffic from 24 to 48 hours and will provide daily, instead of triweekly,

· service at several points.

A representative of the railroad described the benefits of coordinated rail-truck service, and numerous shippers and receivers of freight at points on the rail line expressed a belief that this type of service would be advantageous to them in their business enterprises.

A furniture and undertaking establishment at LaGrange. Ind., has been receiving shipments over the railroad for 30 years. Those shipments weigh 400 pounds or less and are received at least once a week. Although the present rail service is generally satisfactory, a saving of 24 hours in transit by means of the coordinated service would benefit this receiver.

A company at Plainwell, Mich., manufactures steel equipment, work beaches, stools, chairs, cabinets, and other steel items. It has always used rail service for both inbound and outbound shipments. It receives shipments from Bridgeport, Conn., New Brighton and Philadelphia, Pa., Buffalo, N. Y., Cleveland, Ohio,

and Louisville, over the lines of the railroad. Outbound traffic ranging from 50,000 to 75,000 pounds a month is shipped to all parts of the United States. This company uses motor carriers for short hauls, particularly, from and to points in Indiana and Ohio, and will continue to use them as long as their service remains efficient and satisfactory. On the longer hauls rail service has proved more efficient, but a saving of 24 hours in transit under the proposed rail-motor service would be a definite advantage to this company.

A dealer in farm equipment and hardware in Conklin, Mich., an intermediate point between Grand Rapids and Muskegon, has used the railroad for both inbound and outbound shipments for 15 years. This dealer uses motor carriers in shipping from and to points in Michigan. He receives shipments from Milwaukee, Wis., Moline, Ill., Waterloo, Iowa, and Indianapolis and Kendallville, Ind. The present rail service is too slow, and if the above-described movements could be expedited by 24 hours his particular

business would be benefited.

A furniture dealer at Reed City, Mich., has used the railroad principally for inbound movements of freight for 30 years. He receives shipments from Galion, Ohio, Huntington and Nappanee, Ind., Louisville, Chicago, and Milwaukee, A Saving of 24 hours in transit on these shipments would be a benefit to his business.

At the hearing 37 other shippers located at intermediate and off-route points on the proposed routes appeared in support of the application. It was stipulated by agreement of the parties that their testimony would be similar to that described above. Ten of these shippers are located at points between Fort Wayne and Grand Rapids, 11 between Grand Rapids and Cadillac, 12 between Cadillac and Mackinaw City, including Traverse City, and 1 at Falmouth. These shippers consider the coordinated service essential to their respective businesses and desire that such service be instituted.

Protestant, Parker Motor Freight, of Petoskey, operates a general-commodity service in interstate commerce from Grand Rapids to Mackinaw City, Traverse City, and Harbor Springs, Mich., over routes which duplicate a portion of the proposed routes. However, this carrier does not serve intermediate points between Grand Rapids and Cadillac nor Lake City. If the railroad were to offer its less-than-carload freight to this carrier, the latter could render overnight service between Grand Rapids and points on its routes.

Another protestant, 1O. I. M. Transit Corporation, of Fort Wayne, performs a similar service between Fort Wayne and Kalamazoo, serving all intermediate points. Three of its ve-

hicles operate daily between Fort Wayne and Kendallville and two between Fort Wayne and Kalamazoo. The carrier is also willing and able to handle the less-than-carload traffic of the railroad.

Norwalk Truck Line Company, of Norwalk, Ohio, has 600 units of equipment and operates between Fort Wayne and points in Michigan south of Grand Rapids. The proposed route between Fort Wayne and Grand Rapids will duplicate a portion of this carrier's routes. It performs overnight service between those points and is also willing to accept motor for-rail-shipments from the railroad.

Dallas L. Darling Truck Line, of Grand Rapids, operates between Grand Rapids and Cadillac, and renders daily service between Grand Rapids and Big Rapids, Mich. At the time of the hearing it was serving the Pere Marquette Railroad in substituted service and it would serve the Pennsylvania Railroad in

like manner if given the opportunity.

Associated Truck Lines, of Detroit, Mich., operates approximately 400 pieces of equipment. This protestant renders daily service between points covered by the application and has equip-

ment available to serve all of the proposed routes.

Inter-State Motor Freight System, Inc., of Grand Rapids, operates between Fort Wayne, Traverse City, and Petoskey, and between Grand Rapids and Muskegon. It has "peddler" runs from Fort Wayne to Sturgis, Mich., from Sturgis to Kalamazoo, Mich., and from Kalamazoo to Grand Rapids. It operates approximately 300 vehicles in Michigan and had 50 idle vehicles in that State at the time of the hearing. Shortly before the hearing, it made arrangements with the Pere Marquette Railway Company to perform motor-for-rail service for that line.

Keeshin Motor Express Company, Inc., of Chicago has authority to operate between Fort Wayne and Grand Rapids. It operates three units per day between Kalamazoo and Grand Rapids, and from five to seven units per day between Kalamazoo and Fort

Wayne.

The examiner recommended that authority be granted applicant to operate over the routes described in the appendix subject to certain restrictions. On exceptions, protestants contend that public convenience and necessity do not require the authority sought and that existing motor carriers have facilities to perform the operations in question, should the railroad desire to enter into an agreement with such carriers.

While several motor carriers operate over portions of the routes involved and in some cases perform similar station-to-station service for the Pere Marquette Railroad, it must be borne in mind that the railroad has been and is transporting the traffic in question between its stations and is under an obligation to continue to do so. Applicant's service will be of a different character from that performed by motor carriers generally. It will be limited to the handling of merchandise traffic to and from points on the lines of the railroad in substitution for train service. To utilize the facilities of protestant motor carriers, the railroad would be required to make arrangements with several of them, each performing a more or less disjointed part of the service. The railroad through its subsidiary, merely seeks the substitution of a more efficient for a less efficient means of service.

The proposed operations will be conducted in the same manner and under the same conditions as were considered and discussed at some length by division 5, in Willett Co. of Indiana, Inc., Extension—Ill., Ind., and Ky., 21 M. C. C. 405. In that case certain conditions were attached to the authority granted with a view of insuring that the authorized transportation would not be a duplication of and in competition with existing highway service. Subsequently, in Kansas City S. Transport Co., Ind., Com. Car. Application, 28 M. C. C. 5, these conditions were modified by the substitution of the so-called key-point condition in heu of condition 3

requiring a prior or subsequent rail haul. In the Willett
14 Co. Case, division 5 concluded that the coordinated railtruck service differs from the service given by the railroad
alone or by competing motor carriers alone. It is a new form of
service utilizing both rail and motor carrier transportation to
advantage and in such a way as to render a merchandise service
which is much less expensive and at the same time more expeditious
and more convenient and generally satisfactory to the public
served. Applicant has been performing such service in conjunction with the railroad over its other routes since prior to October
15, 1935. It is clearly shown that many benefits are derived from
such coordinated service.

The motor-carrier service proposed by applicant, operated in close coordination with the railroad's service, will effectuate a reduction in cost, and will result in an increase in efficiency in the transportation over the routes herein considered, which will inure to the benefit of the general public. Furthermore, it does not appear that the restricted service would be directly competitive or unduly prejudicial to the operations of any other motor carrier. We are not impressed by protestants' contentions and are of the opinion that the proposed coordinated service will serve a useful public purpose, and that such useful public purpose cannot be served as well by existing motor carriers. Applicant is able, financially and otherwise, to conduct the described operations.

Since the proposed motor carrier service will be auxiliary to, supplemental of, and coordinated with, the rail service, and since all points which applicant requests authority to serve are stations on the lines of the railroad, the authority herein granted will be limited accordingly. Authority to serve certain key points will be restricted so as to insure a service which is only auxiliary to the rail service and not competitive with existing motor carrier service between such points.

We find that the present and future public convenience and necessity require operation by applicant as a common carrier by motor vehicle, in interstate or foreign commerce, of general commodities, between the points and over the routes shown in the appendix hereto, serving intermediate and off-route points which are stations on the rail line of The Pennsylvania Railroad Com-

pany, subject to the following conditions:

1. The service to be performed by applicant shall be limited to service which is auxiliary to, or supplemental of, rail service of The Pennsylvania Railroad Company, hereinafter called the railroad.

2. Applicant shall not serve any point not a station on a rail

line of the railroad.

3. No shipments shall be transported by applicant as a common carrier by motor vehicle between any of the following points, or through or to or from more than one of said points: Fort Wayne,

Ind., and Grand Rapids, Mich.

4. All contractual arrangements between applicant, the railroad, and the American Contract and Trust Company shall be reported to us and shall be subject to revision, if and as we find it to be necessary in order that such arrangements shall be fair and equitable to the parties.

5. Such further specific conditions as we, in the future, may find it necessary to impose in order to restrict applicant's operation to service which is auxiliary to, or supplemental

of. rail service.

We further find that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and our rules and regulations thereunder; and that a certificate authorizing such operations should be granted.

Upon compliance by applicant with the requirements of sections 215 and 217 of the act and our rules and regulations there-

under, an appropriate certificate will be issued.

By the Commission, division 5.

[SEAL]

W. P. BARTEL, Secretary.

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APPENDIX

PROPOSED ROUTES

Route No. 1 Between Fort Wayne, Ind., and Grand Rapids, Mich.: From Fort Wayne over Indiana Highway 3 to Kendallville, Ind., thence over U. S. Highway 6 to junction with Indiana Highway 9; thence over Indiana Highway 9 to junction with Michigan Highway 78; thence over Michigan Highway 78 to junction with Michigan Highway 86, near Nottawa; thence over Michigan Highway 86 to Nottawa; thence over County Roads, through Mendon and Vicksburg to junction with U. S. Highway 131 at Schoolcraft; thence over U. S. Highway 131 to Grand Rapids. Return over the same route.

Intermediate points to be served; Wallen, Huntertown, La Otto, Avilla, Kendallville, Rome City, Wolcottville, LaGrange, and Howe, Ind., Sturgis, Nottawa, Mendon, Vicksburg, Kalamazoo, County Spur, Plainwell, Martin, Shelbyville, Wayland, and Moline, Mich. No off-route points to be served.

Route No. 1a: From Kendallville to Rome City, Ind., over County Roads: No service to intermediate or off-route points.

Route No. 1b: From Nottawa, Mich., over Michigan Highway 85 to Three Rivers, thence over U. S. Highway 131 to Schoolcraft, Mich.

Route No. 2: Between Grand Rapids and Cadillac, Mich.: From Grand Rapids over U. S. Highway 131 to Cadillac, and return over the same route.

Intermediate points to be served: Rockford, Cedar Springs, Sand Lake, Pierson, Howard City, Morley, Stanwood, Big Rapids, Paris, Reed City, Orono, Ashton, and LeRoy, Mich. Off-route point to be served: Tustin, Mich.

Route No. 2a: From Grand Rapids over County Roads, through Comstock Park and Belmont to junction with U. S. Highway 131 north of Grand Rapids.

Intermediate point to be served: Belmont, Mich. No off-route points to be served.

17 Route No. 3: Between Cadillac and Mackinaw City, Mich.: From Cadillac over U. S. Highway 131 to Petoskey, thence over U. S. Highway 31 to Mackinaw City, and return over the same route.

Intermediate points to be served: Manton, Fife Lake, Kalkaska, Antrim, Mancelona, Alba, Boyne Falls, Petoskey, Bay View, Conway, Oden, Alanson, Brutus, Pellston, Levering, and Carp Lake, Mich. Off-route points to be served: South Boardman, Elmira, and Walloon Lake, Mich.

Route No. 3a: From the junction of U. S. Highway 31 and Michigan Highway 131 north of Bay View, thence over Michigan Highway 131 to Harbor Springs, thence over Michigan Highway 131 and County Roads to Conway, Mich.

Intermediate points to be served: Kegomic, Wequetonsing, and

Harbor Springs, Mich. No off-route points to be served:

Route No. 4: Between Cadillac and Traverse City, Mich.: From Cadillac over U. S. Highway 131 to Walton, thence over County Roads to Summit City, thence over County Road to junction with Michigan Highway 113, thence over Michigan Highway 113 through Kingsley to junction with Michigan Highway 37, thence over Michigan Highway 37 to the junction with U. S. Highway 31, thence over U. S. Highway 31 to Traverse City, and return over the same route.

Intermediate points to be served: Manton, Walton, Summit City, Kingsley, and Mayfield, Mich. Off-route point to be served:

Mayfield, Mich.

Route No. 4a: From Walton over Michigan Highway 113 to junction with Michigan Highway 37, thence over Michigan Highway 37 to junction with U. S. Highway 31, thence over U. S. Highway 31 to Traverse City. No service to intermediate or off-route points.

Route No. 5: Between Cadillac and Falmouth, Mich.: From Cadillac over Michigan Highway 55 to Lake City, thence over Michigan Highway 55 and County Roads to Falmouth, and return

over the same route.

18 Intermediate point to be served: Lake City, Mich. No offroute points to be served.

Route No. 5a: From Cadillac wer Michigan Highway 55 and County Roads through Lucas to Falmouth. No service to inter-

mediate or off-route points.

Route No. 6: Between Grand Rapids and Muskegon, Mich.: From Grand Rapids over U. S. Highway 16 to Coopersville, thence over County Roads, through Conklin, Ravenna, and Sullivan to junction with Michigan Highway 46, thence over Michigan Highway 46 to junction with U. S. Highway 31, thence over U. S. Highway 31 to Muskegon, and return over the same route.

Intermediate points to be served: Ravenna and Conklin, Mich.

No off-route points to be served.

Route No. 6a: From Grand Rapids to Muskegon over U. S. Highway 16. No service to intermediate or off-route points.

Route No. 7: Between Lake City and Manton, Mich.: From Lake City over Michigan Highway 66 to junction with Michigan Highway 42, thence over Michigan Highway 42 to Manton, and return over the same route. No service to intermediate or off-route points.

And thereupon there was issued out of the office of the Clerk of this Court a writ of summons for the defendant to the United States Marshal.

Come now Howell Ellis and John S. Powell, Attorneys, and file appearance for the plaintiff, which appearance is as follows:

In United States District Court

[Title omitted.]

The undersigned, having been duly admitted to practice in the said Court, hereby enter

Appearance

for Plaintiff in the above-entitled cause.

(S) Howell Ellis,

(S) John S. Powell, Attorneys.

Address: 520 Illinois Building, Indianapolis. Phone Ri. 6883.

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In United States District Court

Order designating judges.

Comes now Honorable William M. Sparks, Acting Senior United States Circuit Judge, and files designation of Honorable Sherman Minton. United States Circuit Judge, and Honorable Luther M. Swygert, United States District Judge, to sit as Judges in the above cause, which designation is as follows:

The assignment of two judges by the undersigned being required under Sec. 380a, 28 U. S. C. X., Act of 1937, I hereby designate and assign the Honorable Sherman Minton, United States Circuit Judge in and for the Seventh Judicial Circuit, and the Honorable Luther M. Swygert, United States District Judge for the Northern District of Indiana, to sit as judges in the above-entitled cause.

(S) WILLIAM M. SPARKS,
Acting Senior United States Circuit Judge
in and for the Seventh Judicial Circuit.

CHICAGO, ILLINOIS, February 21, 1944.

In United States District Court

Minute entry re hearing

Feb. 25, 1944

Come now the parties by their respective attorneys and this cause coming on to be heard upon the plaintiff's application for

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a temporary injunction, and now upon the stipulation of parties

made in open Court and by agreement,

It is hereby ordered that no hearing on this cause be held upon the plaintiff's application for a temporary injunction but that all matters in issue in said cause be submitted for determination by the Court on a final hearing herein.

It is further ordered that said final hearing be held on April 28.

1944 at 10:00 A. M.

Come now the Pennsylvania Railroad Company and the Willett Company of Indiana by their respective attorneys and said parties request the Court for permission to intervene as parties defendant herein and for permission to file an intervening petition, and the Court having considered said request it is ordered that the Pennsylvania Railroad Company and the Willett Company of Indiana have leave to intervene in this cause and are hereby made parties defendant with permission to file intervening petitions herein.

Comes now the Norwalk Truck Line Company by its attorney

and files a motion to intervene as a party plaintiff.

In United States District Court

[Title omitted.] |File endorsement omitted.]

Motion for leave to intervene

Filed Feb. 25, 1944

Norwalk Truck Line Company, applicant for intervention, shows to the Court as follows:

1. This is an action to enjoin, set aside, annul and suspend a decision and order of the Interstate Commerce Commission in a proceeding pending before said Commission, entitled The Willett Company of Indiana, Inc., Extension, Fort Wayne, Indiana, to Mackinac City, Michigan, No. MC 2815 (Sub. No. 6).

2. Applicant is a corporation, organized and existing under the laws of the State of Ohio, with office and principal place of busi-

ness at Norwalk, State of Ohio.

3. Applicant is a common carrier of property by motor vehicle and engaged in the transportation of such property for hire in interstate commerce over public highways in the States of Ohio, Indiana, Illinois, and Michigan.

4. Among the routes included in applicant's operations as such common carrier is a route extending between Fort Wayne, Indiana, and Grand Rapids, Michigan, over and along which route applicant renders service to and from points in the States of Indiana and Michigan proposed to be served by the said The Willett

Company of Indiana, Inc., under and by virtue of a Certificate of Public Convenience and Necessity authorized to be issued under the terms of the said order and decision of the Interstate Commerce Commission.

5. Applicant was a party to said proceedings so pending before the Interstate Commerce Commission, appearing as a protestant therein, participating by counsel in said proceeding, presenting evidence in support of its protest therein and filing exceptions to the recommended order of the examiner in said proceedings. Wherefore, applicant joins in the original plaintiff's demand for judgment herein and moves the Court for an order making it a party plaintiff herein in accordance with the provisions of Title 28 U. S. C. 45a and Rule 24 (a) (1) of the Federal Rules of Civil Procedure.

NORWALK TRUCK LINE COMPANY, By Fred I. King, Fred I. King,

Its Attorney.

25

In United States District Court

Order granting leave to intervene.

Feb. 25, 1944

This cause coming on to be heard on the motion of Norwalk Truck Line Company for leave to intervene as a party plaintiff, and the Court having considered said motion,

It is ordered, that Norwalk Truck Line Company has leave to intervene in this cause, and is hereby made a party plaintiff with like effect as if named an original party to this cause.

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In United States District Court

Praccipe

Filed March 9, 1944

HOWELL ELLIS

· ATTORNEY AT LAW

520 Illinois Building, Indianapolis, Indiana (4)

Макси 9, 1944.

Re: Harry A. Parker d/b/a Parker Motor Freight, plaintiff v. United States of America, defendant. Civil Action No. 781, In the District Court of the United States for the Southern District of Indiana, Indianapolis Division

Mr. Albert C. Sogemeier, Clerk,

United States District Court for the Southern District of Indiana,

Indianapolis Division, Indianapolis, Indiana.

Dear Mr. Socemeier: I am enclosing herewith two (2) copies of the Complaint in the above entitled cause. In accordance with Rule 4 (4) of the Rules of Civil Procedure, you will please cause process to be issued directed to Francis Biddle, Attorney General of the United States at Washington, D. C., returnable thirty days after service, and cause one copy of the complaint to be served with such process by the United States Marshal by registered mail to said Attorney General, and cause the United States Marshal to forward the other copy of the Complaint by registered mail to W. P. Bartel, Secretary of the Interstate Commerce Commission, Interstate Commerce Commission, Building, Washington, D. C.

Yours very truly,

(S) Howell Ellis,

HE: LL.

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And thereupon there was issued out of the office of the Clerk-of this Court a writ of summons for service upon Francis Biddle, Attorney General of the United States and W. P. Bartel, Secretary of Interstate Commerce Commission, Washington, D. C. to the United States Marshal.

In United States District Court

[Title omitted.]

The undersigned, having been duly admitted to practice in the said Court, hereby enter

Appearance

for The Pennsylvania Railroad Company, a corporation as Intervening Defendant in the above-entitled cause.

(S) OSCAR LINDSTRAND,
Attorneys.

Address: 652 Union Station Bldg., Chicago 6, Illinois.

32

. In United States District Court

[Title omitted.]

Intervention of Interstate Commerce Commission

Filed April 10, 1944

To the Honorable the Judges of said Court:

In accordance with the provisions of section 212 of the Judicial Code, 36 Stat. L. 1150 (U. S. Code, Sup. VI, title 28, Sec. 45a), we hereby enter the appearance of the Interstate Commerce Commission as a party defendant, and of ourselves, as its counsel, in the above-entitled suit.

INTERSTATE COMMERCE COMMISSION,

- By (S) DANIEL W. KNOWLTON, Chief Counsel. .
 - (S) DANIEL H. KUNKEL, Attorney.

34

In United States District Court

[Title omitted.]

Answer of Interstate Commerce Commission

Filed April 10, 1944

Now comes the Interstate Commerce Commission, defendant-intervenor, by its counsel, and in answer to the complaint in this

case respectfully represents:

1. The Commission admits the factual matters set forth in paragraphs 1, 2, 3, 4, and 5 of the complaint, except that it denies that the proposed motor carrier operations authorized by the order of September 25, 1943, will compete with the motor carrier operations of plaintiff.

2. The Commission denies the allegations of paragraphs 6, 7, 8,

9. 10, 11, 12, 13, 14, and 15 of the complaint.

Wherefore, The Commission prays that the complaint be dismissed.

By S Daniel H. Kunkel, Attorney.

S DANIEL W. KNOWLTON, Chief Counsel,

Of Counsel.

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CERTIFICATE OF SERVICE

I hereby certify that I served the within answer upon counsel for all parties in the above suit by depositing the same in the United States Mail in franked envelopes addressed as follows: Kit F.

Clardy, Esq., Olds Tower, Lansing, Micht; Howell Ellis, Esq., 525 Illinois Building, Indianapolis, Ind.; Robert L. Pierce, Esq., Special Assistant to the Attorney General, Department of Justice, Washington, D. C.; Fred I. King, Esq., 1008 Odd Fellows Building, Indianapolis, Ind.

S DANIEL H. KUNKEL,

Attorney,

For Interstate Commerce Commission.

37.

In United States District Court

[Title omitted.]

Answer of the United States of America

Filed April 21, 1944

Now comes the United States of America, a defendant in the above-styled cause, and in answer to the complaint herein, answers

and savs:

1. This defendant admits the allegations contained in paragraphs 1, 2, 3, 4, and 5 of the complaint, insofar as the said allegations relate to matters of fact and not conclusions of law, except that this defendant denies that the proposed motor carrier operations authorized by the Interstate Commerce Commission's order of September 25, 1943, will compete with the motor carrier operations of plaintiff.

2. This defendant denies the allegations of paragraphs 6, 7, 8, 9, 10, 11, 12, 13, 14 and 15 of the complaint, insofar as said allegations

relate to matters of fact and not conclusions of law.

Wherefore this defendant prays that the relief prayed for in the complaint be demied, and that the complaint be dismissed at plaintiff's cost, and that upon final hearing and consideration of this cause, any stipulation, agreement, or order of this Court, entered into or entered at the hearing held on February 25, 1944, upon plaintiff's application for a temporary injunction, by virtue of which any defendant may have been bound, with a view to affording any temporary or interlocutory relief to plaintiff, be rescinded, vacated, and declared to be henceforth inoperative, null, and void.

Edward Dumbauld,

Special Assistant to the Attorney General.

Department of Justice, Washington 25, D. C.

WENDELL BERGE,

Assistant Attorney General.

B. HOWARD CAUGHRAN,

United States Attorney.

I certify that a copy of the foregoing answer was this day mailed to the following persons: Kit F. Clardy, Esquire, Olds Tower, Lansing 8, Michigan; Howell Ellis, Esquire, 525 Illinois Building, Indianapolis, Indiana; Daniel H. Kunkel, Esquire, Interstate Commerce Commission, Washington 25, D. C.; Fred I. King, Esquire, 1008 Odd Fellows Bldg., Indianapolis, Indiana; Kirkwood Yockey, Esquire, 1250 Consolidated Bldg., Indianapolis, Indiana.

S EDWARD DUMBAULD, Edward Dumbauld, Special Assistant to the Attorney General.

APRIL 17, 1944.

41 In United States District Court

[Title omitted.]

The undersigned, having been duly admitted to practice in the said Court, hereby enter

A ppearance

for The Willett Company of Indiana, Inc., Intervenor in the aboveentitled cause.

> (S) HARRY E. YOCKEY, Attorneys.

Address: 1250 Consolidated Bldg., Indianapolis, Ind.

In United States District Court

[Title omitted.]

The undersigned, having been duly admitted to practice in the said Court hereby enter

Appearance

for The Pennsylvania Railroad Company, as intervening deft. in the above-entitled cause.

(S) A. M. DONNAN, *
Attorneys.

Address 925 Pennsylvania Station, Pittsburgh, Pa.

47

45 In United States District Court

[Title omitted.]

The undersigned, having been duly admitted to practice in the said Court hereby enter

Appearance

for Intervenor Defendant The Willett Co. of Ind., Inc., in the above-entitled cause.

(S) KIRKWOOD YOCKEY, Attorneys.

Address: 1250 Consolidated Bldg., Indianapolis 4, Ind.

In United States District Court

[Title omitted.]

The undersigned, having been duly admitted to practice in the said Court hereby enter

Appearance

for O. I. M. Transit Corp., Fort Wayne, Ind., Days Transfer Co., Elkhart, Ind., in the above-entitled cause.

(S) CLAUDE H. ANDERSON, Attorneys.

Address: 601 Illinois Bldg., Indianapolis, Ind.

In United States District Court

[Title omitted.]

Intervening Petition of the Pennsylvania Railroad Company

Filed April 28, 1944

The petitioner, The Pennsylvania Railroad Company, respectfully represents and shows to the Court that it has an interest in the above-entitled cause of action and is entitled to be admitted as a party thereto as follows, to wit:

1. The above entitled cause of action is brought by the plaintiff for a temporary restraining order, temporary injunction, per-

manent restraining order, and permanent injunction to prevent the defendant through its legally constituted regulatory body, the Interstate Commerce Commission, from issuing certificate of public convenience and necessity No. MC-2815 Sub. No. 6 to The Willett Company of Indiana, Inc., in accordance with an order of said Interstate Commerce Commission in Docket No. MC-2815 Sub No. 6, decided September 25, 1943.

2. That under the terms and provisions of said order the Interstate Commerce Commission will issue a certificate of public convenience and necessity to said The Willett Company of Indiana,

Inc., authorizing it to conduct motor carrier operations transporting freight for the petitioner. The Pennsylvania Railroad Company, on the bills of lading of The Pennsylvania Railroad Company over specified regular routes and serving specified cities and towns located on the rail line of The Pennsylvania Railroad Company between Fort Wayne, Indiana, and Mackinaw City, Michigan.

3. That the petitioner was a party to the said proceeding before the Interstate Commerce Commission, appearing therein as an intervener in support of the applicant therein, The Willett Com-

pany of Indiana, Inc.

4. That the petitioner believes that said The Willett Company of Indiana, Inc., is legally entitled to said certificate of convenience

and necessity No. MC-2815 Sub No. 6.

Wherefore said petitioner, The Pennsylvania Railroad Company, respectfully prays for leave to intervene and be made a party in the above-entitled cause so that it may be treated as a party defendant therein with the right to appear and be heard in all further proceedings therein.

THE PENNSYLVANIA RAILBOAD COMPANY,

By (S) OSCAR LINDSTR ND,
OSCAR LINDSTR ND,
OSCAR LINDSTR ND,
Chicago 6, Illinois.

By (S) A. M. DONNAN,
A. M. Donnan,
925 Pennsylvania Station,
Pittsburgh 22; Pennsylvania,
Its Attorneys.

- 51 [Duly sworn to by Oscar Lindstrand; jurat omitted in printing.]
- 52 I certify that a copy of the foregoing Intervening Petition was this day mailed to, or delivered in person to the following persons: Kit F. Clardy, Esquire, Olds Tower, Lansing,

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Michigan; Howell Ellis, Esquire, 525 Illinois Building, Indianapolis, Ind; Daniel H. Kunkel, Esquire, Interstate Commerce Commission, Washington, 25, D. C.; Fred I. King, Esquire, 1008 Odd Fellows Building, Indianapolis, Indiana; Harry E. Yockey, Esquire, Kirkwood Yockey, Esquire, 1250 Consolidated Building, Indianapolis, Indiana; Edward Dumbauld, Esquire, Office of Attorney General of the United States, Washington, D. C.

(S) OSCAR LINDSTRAND,
OSCAR Lindstrand,
Attorney for Petitioner,
The Pennsylvania Railroad Company.

APRIL 28, 1944.

In United States District Cour.

[Title omitted.]

Answer of the Pennsylvania Railroad Company

Filed April 28, 1944

Now comes The Pennsylvania Railroad Company, one of the intervening defendants in the above-styled cause, and in answer

to the complaint herein answers and says:

1. This intervening defendant admits the allegations contained in paragraphs 1, 2, 3, 4, and 5 of the complaint insofar as the allegations relate to matters of fact and not conclusions of law, except that this intervening defendant denies that the preposed motor, carrier operations authorized by the Interstate Commerce Commission's order of September 25, 1943, will compete with the motor carrier operations of plaintiff. It also denies that

plaintiff Parker serves all points involved north of Grand
Rapids, and in particular denies that he serves any intermediate points between Grand Rapids and Cadillac and
Lake City; and denies that plaintiffs and/or "other motor carriers" serve all points sought by applicant.

2. This intervening defendant denies the allegations of paragraphs 6, 7, 8, 9, 10, 11, 12, 13, 14, and 15 of the complaint, insofar as said allegations relate to matters of fact and not conclusions

of law.

Wherefore this intervening defendant prays that the relief prayed for in the complaint be denied, and that the complaint be dismissed at plaintiff's cost, and that upon final hearing and consideration of this cause, any stipulation, agreement, or order of this Court, entered into or entered at the hearing held on February 25, 1944, upon plaintiff's application for a temporary injunction, by virtue of which any defendant may have been bound, with a view to affording any temporary or interlocutory relief to plaintiff, be rescinded, vacated, and declared to be henceforth, inoperative, null, and void.

- (S) OSCAR LINDSTRAND, OSCAR Lindstrand,
- (S) A. M. DONNAN, A. M. Donnan,

Attorneys for Intervening Defendant, The Pennsylvania Railroad Company.

I certify that a copy of the foregoing answer was this day mailed to, or delivered in person to the following persons: Kit F. Clardy, Esquire, Olds Tower, Lansing, Michigan; Howell Ellis, Esquire, 520 Illinois Building, Indianapolis, Indiana; Daniel H. Kunkel, Esquire, Interstate Commerce Commission, Washington 25, D. C.; Fred J. King, Esquire, 1008 Odd Fellows Building, Indianapolis, Indiana; Harry E. Yockey, Esquire, Kirkwood Yockey, Esquire, 1250 Consolidated Building, Indianapolis, Indiana; Edward Dumbauld, Esquire, Office of Attorney General of the United States, Washington, D. C.

(S) OSCAR LINDSTRAND.
OSCAR LINDSTRAND.
Attorney for Intervening Defendant.
The Pennsylvania Railroad Company.

APRIL 28, 1944.

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Comes now The Willett Company of Indiana, Inc., by its attorneys and files motion to intervene as party defendant, leave to intervene having heretofore been granted, and also files answer to the complaint.

In United States District Court

[Title omitted.]
[File endorsement omitted.]

Motion for !-ave to intervene

(Filed April 28, 1944)

The petitioner, The Willett Company of Indiana, Inc., would respectfully represent and show to the Court that it has an interest in the above-entitled cause of action and is entitled to be admitted as a party thereto in this, to-wit:

621175-45-3

Said petiti ner is informed and believes that the above entitled cause of action is brought by the plaintiff for a temporary restraining order, temporary injunction, permanent restraining order, and permanent injunction to prevent the defendant through its legally constituted regulatory body, the Interstate Commerce Commission from issuing certificate of public convenience and necessity No. MC-2815 Sub No. 6 to the petitioner, The Willett Company of Indiana, Inc., in accordance with an order of said Interstate Commerce Commission in Docket No. MC-2815 Sub No. 6 decided September 25, 1943.

That under the terms and provisions of said order No. MC-2815 Sub No. 6, the Interstate Commerce Commission will issue a certificate of public convenience and necessity to said The Willett

Company of Indiana, Inc., authorizing it to conduct motor 58 carrier operations transporting freight for The Pennsylvania Railroad Company, on the bills of lading of The Pennsylvania Railroad Company over specified regular routes and serving specified cities and towns located on the rail line of The Pennsylvania Railroad Company between Fort Wayne, Indiana, and Mackinaw City, Michigan.

That the petitioner believes that said The Willett Company of Indiana, Inc., is legally entitled to said certificate of public con-

venience and necessity No. MC-2815 Sub No. 6.

Wherefore said petitioner, The Willett Company of Indiana, Inc., respectfully moves the Court for leave to intervene and be made a party in the above entitled proceedings so that it may be treated as a party defendant therein with the right to have notice and to appear at the taking of testimony, produce and cross-examine witnesses, to be heard in person or by counsel upon brief, and at oral argument if oral argument is granted, and for all other necessary and proper relief in the premises.

THE WILLETT COMPANY OF INDIANA, INC.

By HARRY E. YOCKEY,

Harry E. Yockey, Its Attorney.

[Duly sworn to by Harry E. Yockey; jurat omitted in printing.]

I certify that a copy of the foregoing answer was this day

I certify that a copy of the foregoing answer was this day mailed to, or delivered in person, to the following persons:

Kit F. Clardy, Esquire, Olds Tower, Lansing, Michigan; Howell Ellis, Esquire, 525 Illinois Building, Indianapolis, Indiana; Daniel H. Kunkel, Esquire, Interstate Commerce Commission, Washington, D. C.; Fred I. King, Esquire, 1008 Odd Fellows Building, Indianapolis, Indiana; Kirkwood Yockey, Esquire, 1250 Consolidated Building, Indianapolis, Indiana; Edward Dumbauld, Esquire, Office of Attorney General of the United States, Washington,

D. C.; Oscar Lindstrand, Esquire, 626 Union Station Building, Chicago, Illinois.

HARRY E. YOCKEY,
Harry E. Yockey.
Attorney for Petitioner,
The Willett Company of Indiana, Inc.

APRIL 28, 1944.

This is to certify that I received a copy of the foregoing motion, this 28th day of April 1944.

(S) B. HOWARD CAUGHRAN,

U.S. Attorney.

61

In United States District Court

[Title Omitted.]
[File endorsement Omitted.]

Answer of The Willett Company of Indiana, Inc.

Filed April 28, 1944

Now comes The Willett Company of Indiana, Inc., one of the intervening defendants in the above-styled cause, and in answer to the complaint herein, answers and says:

1. This intervening defendant admits the allegations contained in paragraphs 1, 2, 3, 4, and 5 of the complaint insofar as the allegations relate to matters of fact and not conclusions of law, except that this intervening defendant denies that the proposed motor carrier operations authorized by the Interstate Commerce Commission's order of September 25, 1943, will compete with the motor carrier operations of plaintiff. It also denies that plaintiff Parker serves all points involved north of Grand

Rapids, and in particular denies that he serves any intermediate points between Grand Rapids and Cadillac and Lake City; and denies that plaintiffs and/or "other motor carriers", serve all points sought by applicant.

2. This intervening defendant denies the allegations of paragraphs 6, 7, 8, 9, 10, 11, 12, 13, 14, and 15 of the complaint, insofar as said allegations relate to matters of fact and not conclusions of law.

Wherefore this intervening defendant prays that the relief prayed for in the complaint be denied, and that the complaint be dismissed at plaintiff's cost, and that upon final hearing and consideration of this cause, any stipulation, agreement, or order of this Court, entered into or entered at the hearing head on February 25, 1944, upon plaintiff's application for a temporary injunc-

tion, by virtue of which any defendant may have been bound, with a view to affording any temporary of interlocutory relief to plaintiff, be rescinded, vacated, and declared to be henceforth inoperative, null, and void.

HARRY E. YOCKEY, Harry E. Yockey,

Attorney for Intervening Defendant, The Willett Company of Indiana, Inc.

KIRKWOOD YOCKEY, Of Counsel.

day mailed to, or delivered in person, to the following persons: Kit F. Clardy, Esquire, Olds Tower, Lansing, Michigan; Howell Ellis, Esquire, 520 Illinois Building, Indianapolis, Indiana; Daniel H. Kunkel, Esquire, Interstate Commerce Commission, Washington 25, D. C.; Fred I. King, Esquire, 1008 Odd Fellows Building, Indianapolis, Indiana; Kirkwood Yockey, Esquire, 1250 Consolidated Building, Indianapolis, Indiana; Edward Dumbauld, Esquire, Office of Attorney General of the United States, Washington, D. C.; Oscar Lindstrand, Esquire, 626 Union Station Building, Chicago, Illinois.

HARRY E. YOCKEY,
Harry E. Yockey?
Attorney for Intervening Defendant,
The Wittett Company of Indiana, Inc.

APRIL 28, 1944.

This is to certify that I received a copy of the foregoing answer, this 28th day of April 1944.

(S) B. HOWARD CAUGHRAN, U. S. Attorney.

RA

In United States District Court

Order granting leave to intervene

April 28, 1944

Come now Regular Common Carrier Conference of The American, Trucking Associations, Inc.; Motor Carriers Central Freight Association; Consolidated Freight Company; and Creston Transfer Company, by their attorneys and file petition for leave to intervene which petition is granted and said parties are given leave to intervene.

In United States District Court

[Title omitted.]

Petition for leave to intervene

Filed April 28, 1944.

Now come Regular Common Carrier Conference of the American Trucking Associations, Inc., a District of Columbia corporation; Motor Carriers Central Freight Association, a Michigan corporation; Consolidated Freight Company, a Michigan corporation; and Creston Transfer Company, a Michigan corporation, by their attorneys K. F. Clardy, Robert E. DesRoches and Howell Ellis, and respectfully pray this Court for leave to intervene, and for reasons therefor say:

That the American Trucking Associations, Inc., is a proporation recognized under the laws of the District of Columbia with general offices at 1424 16th Street NW, Washington, D. C., and is a national organization of the trucking industry and is owned and maintained by said industry. That the said membership includes most of the common motor carriers in the United States; that such carriers are operating in interstate commerce under the authority of the Interstate Commerce Commission; that many of said members are operating in competition with the Pennsylvania Railroad Company and with the various motor carrier subsidiaries of that railroad, including The Willett Company of Lama, Inc.

66

That the said American Trucking Associations, Inc., is authorized to and does regularly appear for and on behalf of its members in many proceedings before the Interstate Commerce Commission and particularly in proceedings of the type and kind involved in this present litigation; that it is at present actively participating as a plaintiff in a cause entitled American Trucking Associations, Inc., et al. vs. United States of America and now pending before the District Court of the United States for the District of Virginia; that among the issues in that said proceeding is a series of questions involved in this proceeding; that chief among those issues is the question of whether or not a railroad or its subsidiary shall be granted a motor carrier certificate without presenting the same kind and measure of proof required from independent motor carrier applicants.

III /

That the issues in this case are regarded by the said association and its membership as being of vital importance to the future of the trucking industry as a whole and of its individual members; that if the tests prescribed by the Commission in the order complained of in this cause are not held to be improper and unlawful it will make it impossible for any member of this association to successfully oppose any application anywhere in the United States filed by any railroad or its subsidiary; that for all practical purposes the said Commission order in this case has said in effect that the Commission has and will hereafter apply one interpretation of the statute to independent motor carrier applicants and a wholly different test to all railroads or railroad-owned subsidiaries who seek motor carrier certificates; that for this and other reasons, therefore, this intervenor and its membership have a most vital interest in this cause and its disposition.

67 IV

That Motor Carriers Central Freight Association is a Michigan corporation whose membership is composed of common motor carriers operating in interstate commerce under the authority of the Interstate Commerce Commission in a large number of states including Michigan and Indiana; that many of its members are in direct competition with the Pennsylvania Railroad; that many of its members will be in direct competition with the motor carrier operations being considered in the above entitled cause; that in particular several of its members operate between Fort Wayne and Kalamazoo, Grand Rapids, Muskegon and other points involved in the said proceeding; that its position with regard to the issues and the effect of the grant of the proposed authority is the same as that of American Trucking Associations, Inc.: that if the said authority is granted, the said Willett Company of Indiana, Inc., will be in a position to and undoubtedly will take a substantial portion of the business now enjoyed by these said carriers; that because of its relationship with its parent the Pennsylvania Railroad, the said carrier will be able to operate at lower rates and do many things ordinary common motor carriers are not permitted to do because of the discriminatory manner in which the statute is being applied; that it will be able to operate at lower rates because the railroad will finance any deficit and thus enable the carrier to offer service below cost. This will permit unfair competition and tend to develop a monopoly. That for these and many other reasons this intervenor has a most substantial interest in the case and in its disposition.

V

That the Consolidated Freight Company is a Michigan corporation holding a common motor carrier certificate duly issued to it
by the Interstate Commerce Commission in Docket No. MC 30897;
that the authority thus conferred upon it contains among
68 other rights a number of routes involved in the certificate
authorized by the Commission to be issued to the said Willett Company of Indiana, Inc.; that among such routes are the following: Grand Rapids to Cadillac: Grand Rapids and Muskegon;
Constantine and Kalamazoo and other points.

VI

That the said Consolidated Freight Company is and will be in competition with the said Willett Company of Indiana, Inc., and its parent, the Pennsylvania Railroad Company; that it is presently transporting commodities generally between many points in interstate commerce transferred to it by other carriers competing with Railroad Company; that, in addition, it handles freight in interstate commerce transferred to it by other carriers competing with the said Pennsylvania Railroad; that it also transfers freight to carriers competing with the said railroad; that the same thing is true with respect to freight interchanged with other carriers now operating between the points and over the routes involved in the proposed certificate; that it is in direct and open competition on the handling of freight in interstate commerce, therefore, to and from the points and over the routes involved in the proposed certificate.

vn

That if the said authority is granted to the said Willett Company of Indiana, Inc., and it is permitted to commence operations, the said competition now existing will be increased in an unlawful manner and will cause harm and damage to this intervenor of a kind and nature it is difficult to compute; that such injury will be substantial; that its objection to the said certificate are the same as those advanced for the American Trucking Associations, Inc., and by the plaintiff, Parker Motor Freight.

69 VIII

That the Creston Transfer Company is a common motor carrier engaged in operation between many points in many states; that such operations are carried on under authority of a certificate issued to it by the Interstate Commerce Commission in Docket No. MC-18176; that under such authority it is presently competing with the Pennsylvania Railroad Company over every one of the routes involved in the said certificate and to and from all of the

points thereon; that, in addition, it is in competition with the said railroad at every point served by that said railroad in Michigan, Illinois, Indiana, Ohio, Pennsylvania, New York and other states; that for this reason, the proposed certificate will be particularly harmful and injurious to this intervenor; that it adopts and makes its own the various allegations set out in the Bill of Complaint in this cause and set out above in this petition for leave to intervene on behalf of the American Trucking Associations, Inc., Motor Carriers Central Freight Association, and Consolidated Freight Company.

IX

Because your petitioners are fearful that the representation of their interest by the existing plaintiff is or may be inadequate and your petitioners are and may be bound by any judgment or decree entered in the action.

X

Because your petitioners have a vital interest in any final decision that the Court might enter in this cause and unless your petitioners are granted leave to intervene as party plaintiffs so as to protect their interests, your petitioners will suffer great and irreparable harm and damage in the excess of \$3,000.00.

This petition is based upon the files and records in this cause,
Rule No. 24 of Rules of Civil Procedure and the
Statutes of the United States in such case made and

provided.

Wherefore, the said Regular Common Carrier Conference of the American Trucking Associations, Inc., Motor Carriers Central Freight Association, Consolidated Freight Company and Creston Transfer Company now respectfully pray this Honorable Court for leave to intervene in the said cause and to take part in all proceedings therein.

Respectfully submitted.

REGULAR COMMON CARRIER CONFERENCE OF THE AMERICAN TRUCKING ASSOCIATIONS, INC., MOTOR CARRIERS CENTRAL FREIGHT ASSOCIATION,

CONSOLIDATED FREIGHT COMPANY, CRESTON TRANSFER COMPANY,

By S K. F. CLARDY,

S ROBERT E. DES ROCHES,

Attorneys for Intervenors.

Of Counsel:

Howell Ellis,

Dated Lansing, Michigan, April 26th, 1944.

71 [Duly sworn to by K. F. Clardy and Robt. E. Des Roches; jurat omitted in printing.]

72

In United States District Court

Minute entry of submission

April 28, 1944

Come now the parties by their respective attorneys and this cause now coming on to be heard upon final hearing before a duly constituted District Court of three judges convened pursuant to the provisions of law, and the evidence and argument of counsel being heard the defendants and the intervenors are given to and including May 18, 1944, and the plaintiff is given to and including May 29, 1944, within which to file their respective briefs and submit drafts of special findings of fact and conclusions of law, thereafter this cause is to be finally submitted.

74

In United States District Court

[Title omitted.]

Special findings of fact and conclusions of law submitted by intervening defendant, the Willett Company of Indiana, Inc.

May 18, 1944

Comes now the intervening defendant, The Willett Company of Indiana, Inc., at the time of filing its brief herein, and submits its special findings of fact and conclusions of law as follows:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This cause came on to be heard before a statutory Court consisting of the Honorables Sherman Minton, Circuit Judge, and Robert C. Baltzell and Luther M. Swygert, District Judges, upon application of the plaintiff for a temporary restraining order and temporary injunction to enjoin and suspend until further order of the Court the operation, execution, effect and enforcement of the orders of the Interstate Commerce Commission bearing dates of September 25, 1943, and February 8, 1944, wherein the Commission authorized the granting of a Certificate of Convenience and Necessity under No. MC-2815 Sub No. 6 to The Willett Company of Indiana, Inc., granting it authority as a common carrier of property by motor vehicle to operate seven (7) routes substan-

tially parelleling the Pennsylvania Railroad in a station-tostation rail-truck service in interstate and foreign commerce in substitution of railroad way-car service on the Pennsylvania Railroad covering said routes in the transportation of commodities generally in less than carload lots.

The complaint is brought under Title 28, U. S. Code, Section 41, subdivision 28 and Sections 43, 44, 45, 46, 47, 47a and 48 and under Title 49, U. S. Code; Sections 17 (9) and 305 (g) (h) (being Sections 17 (9) and 205 (g) (h) of the Interstate Commerce Act). and alleges that the order is unlawful, was arbitrarily and capriciously determined, that wrong tests in the application of law were applied by the Commission, that it did not contain the proper findings on material issues, questions of fact and law, that it was an unreasonable and arbitrary exercise of power, and that the Commission wholly omitted to give any consideration to any controlling facts in the case.

Norwalk Truck Lines Company, American Trucking Association, Motor Carriers Central Freight Association, Consolidated Freight Company, and Creston Transfer Company intervened in support of the plaintiff, and The Willett Company of Indiana, Inc., and The Pennsylvania Railroad Company intervened in support of the defendants. Counsel representing plaintiffs, defendants, and interveners were present at the hearing when evidence taken before the Commission was introduced together with certain orders made and entered by the Commission. The case was submitted for final decree and determination.

The Court being fully advised in the premises, and pursuant to Rule 52 of the Rules of Civil Procedure, makes the following findings of fact and conclusions of law:

Findings of fact

I. The intervening defendant, The Willett Company of Indiana, Inc., is a resident of and maintains its principal place of business

within the jurisdiction of the Court.

II. The inferfening defendant, The Willett Company of Indiana, Inc., filed with the Commission an application under Section 207-(a) of the Motor Carrier Act of 1935 (49 United States Code, Sup. I, Title 49, Section 307-a), seeking as amended a Certificate of Convenience and Necessity authorizing an extension of operation as a common carrier by motor vehicle in interstate and foreign commerce of general commodities with certain exceptions in less than carload lots over seven (7) specified regular routes between specified points in the States of Indiana and Michigan.

III. That the service sought by applicant is a station-to-station operation which is auxiliary to, and supplemental of, rail service of The Pennsylvania Railroad in a substituted rail-truck service by motor vehicle in lieu of service being rendered by the Penn-

sylvania Railroad in way-cars.

IV. After hearing, the Commission found that the proposed operations will be conducted in the same manner and under the same conditions as were considered and discussed at some length by Division 5 in The Willett Company of Indiana, Inc., extension—Illinois, Indiana, and Kentucky, 21 M. C. C. 405, and in Kansas City Southern Transport Company, Inc., common carrier application, 28 M. C. C. 5. That it is a new form of service utilizing both rail and motor carrier transportation to advantage and in such a way as to render a merchandise service which is much

less expensive and at the same time more expeditious and more convenient and generally satisfactory to the public That applicant has been performing such service in conjunction with the railroad over its 25 other routes since prior to October 15, 1935, and that it was clearly shown that many benefits are derived from such coordinated service. That the proposed service will effectuate a reduction of cost and will result in an increase in efficiency in the transportation over the routes under consideration, which will inure to the benefit of the general public; that it does not appear that the restricted service will be directly competitive with or unduly prejudicial to the operations of any other motor carrier. That the Commission was not impressed with protestant's contentions and were of the opinion that the proposed coordinated service will serve a useful public purpose, and that such useful public purpose cannot be served as well by existing motor carriers; that applicant is able financially and otherwise to conduct the described operation; that the proposed service will be auxiliary to, supplemental of, and coordinated with. the rail service of The Pennsylvania Railroad Company and all points to be served are stations on the lines of the railroad. future public convenience and necessity require the operation by applicant as a common carrier by motor vehicle in interstate or foreign commerce of general commodities between the points and over the routes shown in the application, serving intermediate and off-route points which are stations on the rail line of The Pennsylvania Railroad Company.

V. The said order contained the following restrictions:

- 1. The service to be performed by applicant shall be limited to service which is auxiliary to, or supplemental of, rail service of The Pennsylvania Railroad Company, hereinafter called the railroad,
- 78 2. Applicant shall not serve any point not a station on the rail line of the railroad.
- 3. No shipments shall be transported by applicant as a common carrier by motor vehicle between any of the following points, or through or to or from more than one of the said points: Fort Wayne, Ind., and Grand Rapids, Mich.

4. All contractual arrangements between applicant, the railroad and the American Contract and Trust Company shall be reported

to us and shall be subject to revision, if and as we find it to be necessary in order that such arrangements shall be fair and equitable to the parties.

5. Such future specific conditions as we, in the future, may find it necessary to impose in order to restrict applicant's operation to service which is auxiliary to, or supplemental of, rail

service..

VI. Plaintiffs complain that the order is unlawful, was arbitrarily and capriciously determined, that wrong tests in the application of law were applied by the Commission, that it did not contain the proper findings on material issues, questions of fact and law, that it was an unreasonable exercise of power, and that the Commission wholly omitted to give any consideration to controlling facts in the case.

VII. The plaintiff filed a petition for reconsideration by the

Commission, which petition was denied.

VIII. At the hearing of this case plaintiffs introduced in evidence a copy of a portion of the record before the Commission, upon which the order under review was based, which was the only evidence introduced at the hearing.

Conclusions of law

I. The Court has jurisdiction of the action herein.

II. The Commission report and order of September 25, 1943, and order of February 8, 1944, were made after a full hearing.

III. The findings of fact upon which the order is based

are supported by substantial evidence.

IV. The Commission order is supported by the findings of fact.
V. The Commission's construction of the pertinent provisions of the Act is correct and the order is lawful and valid.

VI. The Complaint should be and hereby is dismissed for want

of equity.

Respectfully submitted.

(S) KIRKWOOD YOCKEY. Kirkwood Yockey,

(S) HARRY E. YOCKEY, Harry E. Yockey,

Attorneys for Intervening Defendant, The Willett Company of Indiana, Inc.

80 STATE OF INDIANA,

County of Marion, 88:

Harry E. Yockey, being first duly sworn, upon his oath says that he is one of the attorneys of record herein for The Willett Company of Indiana, Inc., an intervening defendant herein, and

that he has this 18th day of May 1944, served a true and correct copy of the foregoing special findings of fact and conclusions of law either by delivery in person or by first class mail, postage prepaid, to all parties of record herein at the following addresses, to wit: Kit F. Clardy, Esquire, Olds Tower, Lansing, Michigan; Howell Ellis, Esquire, 520 Illinois Building, Indianapolis 4, Indiana; Daniel H. Kunkel, Esquire, Interstate, Commerce Commission, Washington 25, D. C.; Fred I. King, Esquire, 1008 Odd Fellow Building, Indianapolis 4, Indiana; Edward Dumbauld, Esquire, Office of Attorney General of the United States, Washington., D. C.; Oscar Lindstrand, Esquire, 652 Union Station Building, Chicago 6, Illinois: Robert E. Des Roches, Esquire, 712 Olds Tower, Lansing, Michigan; Howard E, Caughran, Esquire, United States District Attorney, U. S. Court House and Post Office Building, Indianapolis, Indiana; John S. Powell, Esquire, 520 Illinois Building, Indianapolis 4, Indiana; Edward M. Reidy, Esquire, Interstate Commerce Commission, Washington 25, D. C.; Daniel W. Knowlton, Esquire, Interstate Commerce Commission. Washington 25. D. C.; Claude H. Anderson, Esquire, 601 Illinois Building, Indianapolis 4, Indiana, A. M. Donnan, Esquire, 925 Pennsylvania Station, Pittsburgh, Pennsylvania.

(S) HARRY E. YOCKEY. Harry E. Yockey.

Subscribed and sworn to before me this 18th day of May 1944.

[SEAL]

(S) EUGENE H. YOCKEY.

Notary Public.

My Commission expires March 31, 1948.

In United States District Court

[Title omitted.]

Proposed findings of fact and conclusions of law submitted by plaintiff and intervening plaintiffs

May 29, 1944

This Court makes the following findings of fact:

4. This is a suit brought to set aside an order made September 25, 1943 by the Interstate Commerce Commission authorizing the issuance of a motor carrier certificate of convenience and necessity in a proceeding entitled The Willett Company of Indiana, Inc., Extension—Fort Wayne—Mackinaw City, Mich., Docket No. 2815 (Sub No. 6). The plaintiffs in this suit are motor carriers and associations of motor carriers which allege and which are in fact competitors of the above named applicant with respect to the operations authorized by the proposed certificate.

2. The application was filed by a subsidiary of the Pennsylvania Railroad on September 8, 1941 under the provisions of Section 207 (a) of the Motor Carrier Act. The application was for authority to conduct some seven separate operations of as many different routes roughly paralleling the lines of the Pennsylvania Railroad from Fort Wayne, Indiana to Mackinaw City, Michigan. Numerous competing motor carriers intervened and opposed the granting

of the authority sought. Hearings were held and a proposed report was filed. Exceptions were taken to the proposed grant of authority. These Exceptions were denied and a Petition for Rehearing and Reconsideration was also denied.

3. A certified transcript of evidence in the proceeding discloses that the railroad, through an intermediate corporation, owned all of the stock in the applicant corporation. That the applicant was furnishing service to the railroad at other points on its system. That the operation here contemplated would serve certain named intermediate points on each of the seven routes. That these points are served by the railroad. That the operations would include the handling of merchandise transported by railroad to certain key points where it would be transferred to the motor carrier to be transported to these intermediate points. That, in addition, it would also include the handling of merchandise that would not have either a prior or subsequent rail movement. That it would, in fact, compete with existing motor carriers. That neither the applicant nor the railroad had any knowledge of existing transportation facilities. That the railroad would not make use of any existing motor carrier even if the service was superior to that proposed in this application.

4. The protesting motor carriers presented evidence to show that at least one of them could furnish service on all of the routes and that two or more carriers were in a position to furnish service on each of the seven separate routes. That some of the protestants were then engaged in furnishing precisely the same sort of service to the Pere Marquette in Michigan. That they could and would furnish the proposed service to the railroad if it desired to enter into an arrangement with them. That there is adequate motor

carrier service over all of these routes. That the proposed operations do not differ from those of an ordinary motor carrier and the grant will place the applicant in competition with existing carriers.

5 The Commission order proposes to grant the applicant a certificate authorizing the operations exactly as requested by the applicant. The findings, statements and conclusions set out in the Commission order of September 25, 1943 are without support in the record. The evidence does not show that there is any public need to be served but, on the contrary, discloses that both rail and motor

carrier service now available is adequate and satisfactory. There is no fact of record recited to justify the Commission's conclusion that the new operation is required by the public convenience and

necessity.

6. The order does not contain any proper findings of fact as required by law. The order does not set forth the basic facts upon which such a grant of authority must depend. The order recites some conclusions and arguments that are wholly contrary to the facts of record. The order does not contain a clear and concise statement of the facts or reasons upon which the case was decided and this Court is unable to discern the real basis for the order.

7. The protesting motor carriers were denied the right to introduce testimony going to the heart of the case. Many errors were committed in the receipt and rejection of evidence. The Commission refused to permit the protestants to see, examine and use the contract between the railroad and its subsidiary, although the contract was present at the hearing and inspected by the Joint Board. The Commission refused to permit the matter to be reopened to enable the protesting carriers to make use of the contract and thereby committed grave error.

85 8. The Commission erred in applying the wrong tests in the application of law; that the order of the Commission was an unreasonable exercise of power on the part of the Commission in that the order issued by the Commission has no basis

in fact.

9. That the effect of the order of the Commission, as it now stands, will create a substantial monetary loss on the part of the motor carriers serving the territory embodied in the order in that the operations of The Willett Company are competitive to the operations of the plaintiff motor carriers in this cause.

CONCLUSIONS OF LAW

This Court makes the following findings of law:

1. This Court may review a Commission order granting a certificate of public convenience and necessity to a motor carrier applicant to determine whether or not the order contains a clear understandable statement of the facts and reasoning upon which the order is made. The Court finds that this order does not contain such a statement.

This Court may review such an order to determine whether or not the Commission has made findings of basic facts upon which the validity of the order depends. This Court finds that the order does not contain the required basic findings of fact.

2. This Court may review such a Commission order to deter-

finding of fact and the conclusions set out in the said order. This Court finds that the order is not supported by the evidence.

4. This Court may review such an order to determine whether the Commission has omitted consideration of basic facts upon which the validity of the order depends. The Court finds that the order does omit consideration of basic facts.

5. This Court may review such an order to discover whether the Commission has decided the case upon shadow rather than sub-

stance. Here the order is without substance to support it.

6. This Court may review such an order to discover whether the Commission has misconceived the law and applied an erroneous interpretation in its determination. The Court holds that the Commission has misconceived and misapplied the statute.

7. The Commission committed grave error when it refused to receive evidence offered by the protestants attacking the testimony of shipper witnesses presented by the applicant. It committed error when it refused to permit the protestants to inspect and use the contract between the railroad and its subsidiary and to reopen the case to permit the protestants to examine and use it in presenting their case.

8. This Court is of the opinion that the right of the protestants to a fair hearing has been denied them and that all the rules of justice and equity have been violated by the actions of the Commis-

sion in its conduct of this proceeding.

9. The Commission order is unlawful and the grant of the cer-

tificate was an arbitrary and capricious act.

10. Proof that the Pennsylvania Railroad service will be improved is not proof that the public convenience and necessity requires the grant of a motor common carrier certificate to this applicant. The Commission misconceived its statutory duty in

failing and refusing to accord fair and equal regulation to both rail and motor carriers in accordance with the require-

ments of the national transportation policy.

11. Public convenience and necessity cannot be established by showing that benefits will be received by the railroad owner of the applicant. The Commission misconceived the law and exceeded its statutory powers in assuming that it could substitute a finding of railroad convenience for the normal criteria for proof of public convenience and necessity required by Sec. 207.

12. The Commission erred by not taking into account the fact that existing common motor carriers could furnish the service.

13. The Commission misconceived the law, exceeded its powers, and failed to apply proper legal criteria, in assuming that the railroads could establish a showing of public convenience and necessity based upon the refusal of the railroads to cooperate with or coordinate services with those of independent motor carriers as contemplated by the national transportation policy.

14. An applicant for a motor common carrier certificate must show that there is no reasonably adequate motor common carrier service available to obtain a certificate of convenience and neces-

sity. This was not done here.

15. The Commission misconceived its statutory duty and failed to apply proper legal criteria in connection with issues of convenience and necessity and in failing and refusing to consider whether the same public benefits would be obtained through coordination between railroads and independent motor carriers as might be obtained by duplication of facilities through railroadowned motor carriers.

16. Applications for common motor carrier certificates cannot lawfully be granted on the basis of proof having to

88 - do only with the quality of railroad service available.

17. The fact that a railroad owns the applicant does not relieve it of the necessity of proving the same basic facts as any

other applicant must do.

18. The fact that the service will be performed for a railroad does not alter the essential fact that the operation is that of a motor carrier and that the statute must be applied exactly as in any other case. Here this was not done. The Commission misconceived its power and duty in assuming that it could exempt railroad operated motor carrier rights from the tariff and accounting provisions of Sec. 216, 217, and 220.

19. The statute does not create any hybrid that is neither motor carrier nor railroad and it does not authorize the issuance of special

authority to any such hybrid.

20. The Commission erred in holding that the applicant would perform a new form of service covering both rail and motor carrier

transportation.

21. The Commission erred in its interpretation of the provisions of the Motor Carrier Act and, therefore, the said order is

unlawful and invalid.

22. The Commission erred in applying one standard of proof for a railroad company, or subsidiary of a railroad company, covering the question of public convenience and necessity, in contrast to the standards laid down by the Commission in cases involving applicants that are common motor carriers.

Respectfully submitted. KIT F. CLARDY,

712 Olds Tower, Lansing, Michigan, ROBERT E. DESROCHES,

2379 National Bank Building, Detroit, Michigan,

Howell Ellis, Attorneys for Plaintiff and Intervenors.

Of Counsel.

520 Illinois Building, Indianapolis, Indiana.

90

In United States District Court

[Title omitted.]

Findings of fact and conclusions of law

June 1, 1944.

(Suggested by the United States and Interstate Commerce Commission)

In the above-entitled cause the court makes the following Find-

ings of Fact:

1. This suit, instituted under authority of Sections 43 to 48, Title 28 of the U. S. Code, seeks to set aside and annul a certain order of the Interstate Commerce Commission dated September 25, 1943, in a proceeding known as the Willett Company of Indiana, Inc., Extension—Fort Wayne—Mackinaw City, Mich., Docket No. 2815 (Sub-No. 6).

2. The plaintiff and intervening plaintiffs are motor carriers and associations of motor carriers engaged in the transportation of property by motor vehicle within the territory involved in the proceeding before the Interstate Commerce Commission.

3. On September 8, 1941, Willett Company of Indiana, Inc., a subsidiary of the Pennsylvania Railroad, filed its application with the Commission under the provisions of Section

207 (a) of Part II of the Interstate Commerce Act for authority to conduct seven separate common carrier motor operations over routes substantially paralleling the lines of the Pennsylvania Railroad from Fort Wayne, Ind., to Mackinaw City, Mich., in a station to station rail-truck service in interstate commerce in substitution of railroad way-car service on the Pennsylvania Railroad covering said routes in the transportation of commodities generally in less than carload lots. Protests were filed to the granting of the authority there sought. Hearings were held and the Commission, Division 5, by report and order of September 25, 1943, granted the said application. Thereafter protestants filed petition for rehearing and reconsideration which by order of February 8, 1944, was denied by the full Commission.

4. The instant complaint was filed on February 21, 1944. Following answers by the defendant and intervening defendants the cause came on for final hearing on May 28, 1944, before this court, especially constituted of three judges, as required by the Urgent Deficiencies Act of October 22, 1913. On such hearing there was before the court, and the court considered, the entire record of the evidence before the Commission, including the transcript of

testimony, taken before the Commission and the exhibits introduced in evidence before the Commission.

5. The court adopts as and for its findings of fact, the findings of the Interstate Commerce Commission contained in said report of September 25, 1943.

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CONCLUSIONS OF LAW

- 1. This court has jurisdiction over the parties and the subject matter of this suit.
- 2. The Commission's report and order of September 25, 1943, contained essential findings disclosing a rational basis for the order.
- 3. The finding of the Commission that public convenience and necessity required the granting of said application was based upon statutory criteria.

4. The findings of fact set forth in said report of September

25, 1943, have substantial support in the evidence.

5. The rulings of the Commission with respect to the introduction or rejection of evidence involved no substantial error.

6. The order of the Commission of September 25, 1943, and of February 8, 1944, the latter denying the petition for reconsideration, were within its lawful authority and were not arbitrary or capricious.

7. The complaint is without equity and should be dismissed.

A decree dismissing the complaint is entered herein.

Circuit Judge.

District Judge.

District Judge.

In United States District Court

Minute entry of filing of Court's special findings of fact and Conclusions of law

June 30, 1944

This cause coming on now to be finally heard by the Court, and the parties appearing by their respective attorneys, and the Court having heard the evidence and the argument of counsel and being sufficiently advised in the premises, now, pursuant to Rule 52 of the Rules of Civil Procedure, signs and files herein its special findings of fact and states its conclusions of law thereon, which said special

findings of fact and conclusions of law are ordered by the Court filed and made a part of the record in this cause, all of which is now done.

94.

In United States District Court

[Title omitted.] File endorsement omitted.]

Special findings of fact and conclusions of law

Filed June 30, 1944

Special findings of fact

Pursuant to Rule 52 of the Rules of Civil Procedure, this Court now states its Special Findings of Fact:

I

This is a suit brought under U. S. Code, Title 28, Chap. 2, Sec. 41 (28) and Sec. 43-48 inclusive to set aside an order made September 25, 1943, by the Interstate Commerce authorizing the issuance of a motor carrier certificate of convenience and necessity in a proceeding entitled The Willett Company of Indiana, Inc., Extension—Fort Wayne—Mackinaw City, Mich., Docket No. MC-2815 (Sub No. 6). The plaintiffs in this suit are motor carriers who are competitors of the above-named applicant with respect to the operations authorized by the proposed certificate and associations of motor carriers.

II

An application was filed with the Interstate Commerce Commission by The Willett Co. of Indiana, Inc., a subsidiary of the Pennsylvania Railroad on September 8, 1941 under the provisions of Section 207 (a) of Part II of The Interstate Commerce Act. The application was for authority to conduct seven separate operations on as many different routes paralleling the lines of the Pennsylvania Railroad from Fort Wayne, Indiana to Mackinaw City, Michigan. Numerous competing motor carriers intervened and opposed the granting of the authority sought. Hearings were held and a proposed report was filed. Exceptions and a Petition for Rehearing and Reconsideration were denied. Suit to set aside order was filed on February 21, 1944. Answers were duly filed on behalf of the United States, the Interstate Commerce Commission, and intervenors. Argument was had and the

cause submitted on final hearing on April 28, 1944. At the hearing plaintiff introduced in evidence a certified copy of the record before the Interstate Commerce Commission. This was all the evidence in the case.

III

The operations proposed are motor carrier operations which would be competitive with existing motor carrier service. The railroad, however, refused to make use of any of the existing lines. The applicant's proof concerned an alleged improvement in railroad service. No proof was made or offered by the applicant or presented in evidence that present highway common motor carrier transportation service by duly certificated carriers operating in interstate or foreign commerce and serving the points proposed to be served by the applicant was or would be inadequate to serve the public need therefor. Proof was presented before the Commission by the plaintiff and other protestants concerning the adequacy of existing common motor carrier service. There was no substantial evidence to prove public convenience and necessity.

(S) SHERMAN MINTON,
Judge, United States Circuit Court of Appeals.
(S) ROBERT C. BALTZELL.
Judge, United States District Court.
(S) LUTHER M. SWYGERT,
Judge, United States District Court.

Dated this 30 day of June 1944.

96

Conclusions of law

Upon the above and foregoing Special Findings of Fact, the Court now states its Conclusions of Law, as follows, to wit:

I

The Court has jurisdiction of the subject matter and of the parties in this cause of action.

П

The applicant did not meet the statutory requirements and the Interstate Commerce Commission failed to exact from applicant, as a railroad subsidiary, the requisite proof to establish public convenience and necessity.

III

There was no substantial evidence to support the order of the Interstate Commerce Commission that public convenience and necessity requires the issuance to applicant of a certificate of public convenience and necessity authorizing operations by motor vehicle as a common carrier of property over the routes involved, and the order is, therefore, illegal and void and should be permanently enjoined.

(S) Sherman Minton,
Judge, United States Court of Appeals,
(S) Robert C. Baltzell,
Judge, United States District Court.
(S) Luther M. Swygert,
Judge, United States District Court,

Dated this 30 day of June 1944.

97

In United States District Court

Decree

June 30, 1944

It is Therefore Ordered, Adjudged and Decreed by the Court that the order made and entered by the defendant, Interstate Commerce Commission as of September 25, 1943, in its Docket No. MC 2815 (Sub No. 6), entitled The Willett Company of Indiana, Inc., Extension—Fort Wayne—Mackinaw City, Mich., complained of in the complaint, is illegal and void, and the defendants. United States of America and Interstate Commerce Commission, and their officers, agents, servants, employees and attorneys, and all those persons in active concert or participation with them, who receive actual notice of this order by personal service or otherwise, should be and they are hereby permanently enjoined and prohibited from enforcing or attempting to enforce the same in any manner.

99

In United States District Court

[Title omitted.]

Petition for appeal

Filed Aug. 22, 1944

The Interstate Commerce Commission, The Willett Company of Indiana, Inc., and The Pennsylvania Railroad Company, intervening defendants in the above-entitled cause, feeling themselves aggrieved by the final decree of the United States District Court

for the Southern District of Indiana, Indianapolis Division, entered in said court on June 30, 1944, pray an appeal from said decree to the Supreme Court of the United States.

The particulars wherein said intervening defendants consider the decree erroneous are set forth in the assignment of errors accompanying this petition, to which reference is hereby made.

Said defendants pray that a transcript of the record, proceedings and papers on which said decree was made and entered, duly authenticated, be transmitted forthwith to the Supreme Court of the United States.

Dated August 22nd, 1944.

100

Daniel W. Knowlton,

Chief Counsel,

Daniel H. Kunkel,

Attorney,

For Interstate Commerce Commission.

HARRY E. YOCKEY, KIRKWOOD YOCKEY,

For Willett Company of Indiana, Inc.

H. Z. MAXWELL,

For A. M. Donnan,

H. Z. MAXWELL, For Oscar Lindstrand,

H. Z. MAXWELL,

For H. Z. Maxwell,

H. Z. MAXWELL,

For John Dickinson,

For The Pennsylvania Railroad Company.

102 In the District Court of the United States for the Southern District of Indiana, Indianapolis Division

Civil Action No. 781

HARRY A. PARKER, Doing Business as Parker Motor Freight, ET AL, PLAINTIFFS

UNITED STATES OF AMERICA, ET AL., DEFENDANTS

. Assignment of errors

Filed August 22, 1944

Come now the Interstate Commerce Commission, The Willett Company of Indiana, Inc., and The Pennsylvania Railroad Company, intervening defendants in the above entitled cause, and file

the following assignment of errors upon which they shall rely in the prosecution of the appeal to the Supreme Court of the United States herewith petitioned for in said cause from the decree of the District court of the United States for the Southern District of Indiana, Indianapolis Division entered June 30, 1944:

1. The Court erred in holding that the operations proposed were motor carrier operations which would be competitive with

existing motor carrier service.

2. The Court erred in holding that applicant's only proof concerned an alleged improvement in railroad service.

3. The Court erred in holding that there was no substantial evi-

dence to prove public convenience and necessity.

4. The Court erred in substituting its judgment for that of the

Commission upon purely administrative matters.

5. The Court erred in concluding that applicant did not meet the statutory requirements and that the Commission failed to exact from applicant, as a railroad subsidiary, the requisite

103 proof to establish public convenience and necessity.

6. The Court erred in concluding that there was no substantial evidence to support the order of the Commission that public convenience and necessity required the issuance of a certificate of public convenience and necessity authorizing operation by motor vehicle as a common carrier of property over the routes involved.

7. The Court erred in concluding that the order of the Commission was illegal and void and should be permanently enjoined.

8. The Court erred in entering the final decree of June 30, 1944.

The Court erred in failing to find that the complaint was without equity.

10. The Court erred in failing to dismiss the complaint. Dated August 22, 1944.

DANIEL W. KNOWLTON, Chief Counsel,

DANIEL H. KUNKEL,

Attorney.

For Interstate Commerce Commission,

HARRY E. YOCKEY, KIRKWOOD YOCKEY,

For Willett Company of Indiana, Inc.

H. Z. MAXWELL

For A. M. Donnan,

H. Z. MAXWELL

For Oscar Lindstrand.

H. Z. MAXWELL

For H. Z. Morwell.

H. Z. MAXWELL,

For John Dickinson,

For The Pennsylvania Railroad Company.

104

In United States District Court

Order allowing appeal

Aug. 22, 1944

In the above-entitled cause, defendants having made and filed their petition praying for an appeal to the Supreme Court of the United States from the final decree of this Court entered June 30, 1944, and having also made and filed an assignment of errors and a statement of jurisdiction, and having in all respects conformed to the statutes and rules of Court in such cases made and provided;

It is ordered and decreed, that the appeal be, and the same is

hereby, allowed as prayed for,

And it is further ordered, that petitioners other than the Interstate Commerce Commission, give bond in the sum of \$250.00 as a cost bond.

And it is further ordered, that the Clerk of Court transmit to the United States Supreme Court, as part of the record herein, the original papers, in lieu of copies thereof, as may be designated by appellants' and appellees' praecipe for transcript of the record filed pursuant to Rule 10 of the Revised Rules of the Supreme

Court of the United States.

116 [Citation in usual form, filed Aug. 22, 1944; omitted in printing.]

122

In United States District Court

[Title omitted.]

Notice of appeal

Filed Aug. 23, 1944

To the ATTORNEY GENERAL FOR THE STATE OF INDIANA

You are hereby notified that the District Court of the United States for the Southern District of Indiana, Indianapolis Division, on August 22nd, 1944, filed and entered an order allowing an appeal by the United States and the Interstate Commerce Commission to the Supreme Court of the United States from a decree filed and entered on June 30, 1944, in the above-entitled cause, and that the citation signed by such Court on August 22nd, 1944, in connection with the order allowing such appeal, is made returnable within 40 days from the date of the signing of such citation.

Attached hereto are copies of each of the following documents: the citation referred to above, the petition for and the "der allowing said appeal, defendants" jurisdictional statement and assignment of errors pursuant to Rule 12 of the revised Rules of the

Supreme Court of the United States, and the statement required to be served upon appellees by said Rule 12.

This notice is given to you pursuant to the provisions of U. S. Code, Title 28, Sec. 47a, enacted March 3, 1911, c. 231, Sec. 210.

Dated August 23, 1944

Daniel W. Knowlton, Chief Counsel, Daniel H. Kunkel,

Attorney, '
For Interstate Commerce Commission.

HARRY E. YOCKEY, KIRKWOOD YOCKEY,

For Willett Company of Indiana, Inc.

H. Z. MAXWELL,
for A. N. Donnan,
H. Z. MAXWELL,
for Oscar Lindstrand,
H. Z. MAXWELL,
for H. Z. Maxwell,
H. Z. MAXWELL,

for John Dickinson,
For The Pennsylvania Railroad Company.

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AFFIDAVIT OF SERVICE

STATE OF INDIANA, County of Marion, 88:

Before me, a Notary Public in and for said County and State, personally appeared Harry E. Yockey, who, being first duly sworn, upon his oath says that he served the foregoing and attached Notice of Appeal, together with the following attachments: Citation on Appeal, Petition for Appeal, Order Allowing Appeal; Defendant-Appellants' Jurisdictional Statement, Assignment of Errors, and Statement by Defendant-Appellants Directing Attention to Paragraph 3 of Rule 12 of the Revised Rules of the Supreme Court of the United States, by mailing a copy of the same to the Attorney General for the State of Indiana at State House, Indianapolis, Indiana.

HARRY E. YOCKEY, Harry E. Yockey, 1250 Consolidated Bldg., Indianapolis 4, Indiana.

Subscribed and sworn to this 23rd day of August 1944.

Lou A. Robertson,

Notary Public, Marion County.

My commission expires Nov. 23, 1944.

[Citation in usual form showing service on K. F. Clardy, 126 et al., filed Aug. 23, 1944, omitted in printing.]

Bond on Appeal for \$250.00 approved and filed Aug. 23, 1944, omitted in printing.

[Order approving bond omitted in printing.]

Supreme Court of the United States

Praecipe for transcript of Record

Filed August 23, 1944

To the Clerk of the above-named Court:

You will please prepare a transcript of the record in the herein entitled cause to be transmitted to the Clerk of the Supreme Court of the United States and include in said transcript the following:

1. Complaint and exhibits attached thereto.

2. Order entered February 23, 1944, designating and assigning the Honorable Sherman Minton, United States Circuit Judge for the Seventh District, the Honorable Robert C. Baltzell, District Judge, and Honorable Luther M. Swygert, United States District Judge, to act as Judges in the above entitled cause.

3. Intervention and answer of Interstate Commerce Commis-

sion.

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4. Answer of United States of America.

.5. Intervention and answer of The Willett Company of Indiana, Inc.

6. Intervention and answer of The Pennsylvania Railroad

Company.

7. Record before Interstate Commerce Commission in No. MC-2815 (Sub-No. 6) as introduced in evidence as Exhibit A at the trial of the above-entitled cause.

8. Suggested findings of fact and conclusions of law submitted by defendants. United States of America, and Interstate Commerce Commission.

9. Special findings of fact filed June 30, 1944.

10. Conclusions of law filed June 30, 1944.

11. Judgment entered June 30, 1944

12. Petition for appeal."

13. Assignment of errors.

14. Order allowing appeal.

15. Citation on appeal, and proof of service.

16. Statement directing attention to paragraph 3 of Rule 12 of the Revised Rules of the Supreme Court and proof of service.

17. This praccipe, and proof of service.

18. Jurisdictional Statement.

19. Notice of Appeal to Attorney General of the State of Indiana, and proof of service.

20. Suggested findings of fact and conclusions of law submitted by intervening defendant, The Willett Company of Indiana, Inc.

> Daniel W. Knowlton, Chief Counsel,

DANIEL H. KUNKEL,

Attorney,

For Interstate Commerce Commission.

HARRY E. YOCKEY, KIRKWOOD YOCKEY,

For Willett Company of Indiana. Inc.

H. Z. MAXWELL,

For A. M. Donnan,

H. Z. MAXWELL,

For Oscar Lindstrand,

H. Z. MAXWELL,

For H. Z. Maxwell,

H. Z. MAXWELL, For John Dickinson,

For the Pennsylvania Railroad Company.

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AFFIDAVIT OF SERVICE

STATE OF INDIANA,

County of Marion, 88?

Before me, a Notary Public in and for said County and State, personally appeared Harry E. Yockey, who, being first duly sworn, upon his oath says that he served the foregoing and attached Praccipe for Transcript of Record, by mailing a copy of the same to Honorable James A. Emmert, Attorney General of the State of Indiana, State House, Indianapolis, Ind., and to counsel for the several appellees as follows: K. F. Clardy, 712 Olds Tower, Lansing, Mich.; Howell Ellis, 520 Illinois Building, Indianapolis, Ind.; Fred I. King, 1008 Odd Fellows Building, Indianapolis, Ind.; Robert E. Des Roches, 712 Olds Tower, Lansing, Mich.; John S. Powell, 520 Illinois Bldg., Indianapolis, Ind.; Claude H. Anderson, 601 Illinois Bldg., Indianapolis, Ind.

HARRY E. YOCKEY,
Harry E. Yockey,
1250 Consolidated Building,
Indianapolis 4, Indiana.

Subscribed and sworn to this 23rd day of August 1944.

[SEAL]

LOU A. ROBERTSON,

Notary Public, Marion County.

My commission expires Nov. 23, 1944.

137

In United States District Court

[Title omitted.].
[File endorsement omitted.]

Petition for appeal

Filed Aug. 25, 1944

The United States of America, defendant in the above-entitled cause, feeling itself aggrieved by the final decree of the United States District Court for the Southern District of Indiana, Indianapolis Division, entered in said court on June 30, 1944, prays an appeal from said decree to the Supreme Court of the United States.

The particulars wherein said defendant considers the decree erroneous are set forth in the assignment of errors accompanying

this petition, to which reference is hereby made.

Said defendant prays that a transcript of the record, proceedings, and papers on which said decree was made and entered, duly authenticated, be transmitted forthwith to the Supreme Court of the United States.

Dated August 25, 1944.

CHARLES FAHY,

Solicitor General.

Wendell Berge,
Assistant Attorney General.
Robert L. Pierce,
Edward Dumbauld,

Special Assistants to the Attorney General.
B. Howard Caughran,
United States Attorney.

100

In United States District Court

[Title omitted.]
[File endorsement omitted.]

Assignment of errors

Filed August 25, 1944

Comes now the United States of America, defendant in the above-entitled cause, and files the following assignment of errors upon which it will rely in the prosecution of the appeal to the Supreme Court of the United States herewith petitioned for in

said cause from the decree of the District Court of the United States for the Southern District of Indiana, Indianapolis Division, entered June 30, 1944:

1. The Court erred in entering the final decree of June 30, 1944.

2. The Court erred in making its Special Finding of Fact numbered III.

3. The Court erred in making its conclusions of law numbered II and III.

4. The Court erred in substituting its judgment for that of the

Commission upon purely administrative matters.

5. The Court erred in concluding that the order of the Commission was illegal and void and should be permanently enjoined.

6. The Court erred in failing to find that the complaint

was without equity.

7. The Court erred in failing to dismiss the complaint.

Dated August 24, 1944.

CHARLES FARY, Solicitor General. WENDELL BERGE, Assistant Attorney. General. ROBERT L. PIERCE. EDWARD DUMBAULD, Special Assistants to the Attorney General.

B. HOWARD CAUGHRAN. United States Attorney.

In United States District Court

Order allowing appeal

Aug. 25, 1944

In the above-entitled cause, defendant having made, and filed its petition praying for an appeal to the Supreme Court of the United States from the final decree of this Court entered June 30, 1944, and having also made and filed an assignment of errors and a statement of jurisdiction, and having in all respects conformed to the statutes and rules of Court in such cases made and provided;

It is ordered and decreed, that the appeal be, and the same is

hereby, allowed as prayed for.

And it is further ordered, that the Clerk of Court transmit to the United States Supreme Court, as part of the record herein, the original papers, in lieu of copies thereof, as may be designated by appellants' and appellees' praecipe for transcript of the record filed pursuant to Rule 10 of the Revised Rules of the Supreme Court of the United States

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143 [Citation in usual form, filed Aug. 25, 1944, omitted in printing.]

140

In United States District Court

[Title omitted.]

[File endorsement omitted.]

Notice of Appeal

Filed Aug 25, 1944

To the ATTORNEY GENERAL FOR THE STATE OF INDIANA:

You are hereby notified that the District Court of the United States for the Southern District of Indiana, Indianapolis Division, on August 25, 1944, filed and entered an order allowing an appeal by the United States and the Interstate Commerce Commission to the Supreme Court of the United States from a decree filed and entered on June 30, 1944, in the above-entitled cause, and that the citation signed by such Court on August 25, 1944, in connection with the order allowing such appeal, is made returnable within 40 days from the date of the signing of such citation.

'Attached hereto are copies of each of the following documents: the citation referred to above, the petition for and the order allowing said appeal, defendants' jurisdictional statement pursuant to Rule 12 of the revised Rules of the Supreme Court of the United States, and the statement required to be served upon appellees by said Rule 12.

This notice is given to you pursuant to the provisions of U. S. Code, Title 28 Sec. 47a, enacted March 3, 1911, c. 231, Sec. 210.

CHARLES FAHY,

Solicitor General.

Wendell Berge, Assistant Attorney General, Robert L. Pierce,

EDWARD DUMBAULD.

Special Assistants to the Attorney General.

B. Howard Caughran.

United States Attorney.

164

. In United States District Court

[Title omitted.]
[File endorsement omitted.]

Praecipe For Transcript of Record

(Filed Aug. 28, 1944)

TO THE CLERK OF THE ABOVE-NAMED COURT:

You will please prepare a transcript of the record in the above entitled cause to be transmitted to the Clerk of the Supreme Court of the United States and include in said transcript the following:

1. Complaint and exhibits attached thereto.

2. Order entered February 23, 1944, designating and assigning the Honorable Sherman Minton, United States Circuit Judge for the Seventh Circuit, the Honorable Robert C. Baltzell, District Judge, and Honorable Luther M. Swygert, United States District Judge, to act as Judges in the above entitled cause.

3. Intervention and answer of Interstate Commerce Commis-

sion.

4. Answer of United States of America.

5. Intervention and answer of The Willett Company of Indiana, Inc.

6. Intervention and answer of The Pennsylvania Railroad Com-

pany.

- 7. Record before Interstate Commerce Commission in No. MC-2815 (Sub-No. 6) as introduced in evidence as Exhibit A at the trial of the above-entitled cause.
- 8. Suggested findings of fact and conclusions of law submitted by defendants, United States of America, and Interstate Commerce Commission.

9. Special findings of fact filed June 30, 1944.

10. Conclusions of law filed June 30, 1944.

11. Judgment entered June 30, 1944.

12. Petition for appeal.

13. Assignment of errors.

14. Order allowing appeal.

15. Citation on appeal, and proof of service.

16. Statement directing attention to paragraph 3 of Rule 12 of the Revised Rules of the Supreme Court and proof of service.

17. This praccipe, and proof of service.

18. Jurisdictional Statement.

19. Notice of Appeal to Attorney General of the State of Indiana, and proof of service.

20. Suggested findings of fact and conclusions of law submitted by intervening defendant, The Willett Company of Indiana, Inc. 21. Suggested findings of fact and conclusions of law submitted by United States and Interstate Company of Commission.

(S) HOWARD CAUGHRAN, B. Howard Caughran,

United States Attorney.

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AFFIDAVIT OF SERVICE

STATE OF INDIANA,

County of Marion, 88:

Before me, a Notary Public in and for said County and State, personally appeared B. Howard Caughran, who, being first duly sworn, upon his oath says that he is United States Attorney for the Southern District of Indiana and that he served the foregoing and attached praecipe for transcript of record by mailing a copy of the same to Honorable James A. Emmert, Attorney General of the State of Indiana, Indianapolis, Indiana, and to counsel for the several appellees as follows: K. F. Clardy, 712 Olds Tower, Lansing, Michigan; Howell Ellis, 520 Illinois Building, Indianapolis, Indiana; Fred I. King, 1008 Odd Fellows Building, Indianapolis, Indiana; Robert E. Des Roches, 712 Olds Tower, Lansing, Michigan; John S. Powell, 520 Illinois Building, Indianapolis, Indiana.

(S) B. Howard Caughran.

Subscribed and sworn to before me this 28 day of August 1944.

[SEAL]

(S) MILDRED G. SHERER,

Notary Public.

My commission expires 7/7/48.

168

In United States District Court

[Title omitted.]

File endorsement omitted.].

Praecipe for additional parts of record.

Filed Aug. 30, 1944

To the CLERK OF THE ABOVE-NAMED COURT:

In preparing the record on appeal in the above entitled cause for transmission to the Supreme Court of the United States, you are hereby requested, by each of the undersigned, to include the following:

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1. Motion to intervene of Norwalk Truck Line Company and

Order granting leave to intervene as a party plaintiff.

2. Petition for Leave to Intervene of Regular Common Carrier Conference of the American Trucking Associations, Inc.; Motor Carriers Central Freight Association, a corporation; Consolidated Freight Company, a corporation; and Creston Transfer Company; a corporation; and order granting leave to intervene as parties plaintiff.

3. Appearance of Claude H. Anderson, Attorney for O. I. M.

Transit Corporation and Days Transfer Company, Inc.

Howell Ellis,

For K. F. Clardy.

Howell Ellis, and JNO. S. POWELL, Jno. S. Powell,

Attorneys for Harry A. Parker, d/b/a Parker Motor Freight.

Howell Ellis,

For K. F. Clardy.

Howell Ellis,

For Robert E. Des Roches.

Howell Ellis,

Attorneys for Regular Common Carrier Conference of the American Trucking Associations, Inc.; Motor Carriers Central Freight Association, a corporation; Consolidated Freight Company, a corporation; Creston Transfer Company, a corporation.

> Fred I. King, Fred I. King,

For Norwalk Truck Line Company:

CLAUDE H. ANDERSON, Claude H. Anderson,

For O. I. M. Transit Corporation and Days Transfer Company, Inc.

Dated this 30th day of August 1944.

170.

AFFIDAVIT OF SERVICE

·STATE OF INDIANA,

County of Marion, 88:

Before me, a Notary Public in and for said County and State, personally appeared Fred I. King, who, being first duly sworn, upon his oath says that he served the foregoing and attached Praecipe for Additional Parts of Record, by mailing a copy thereof to Honorable James A. Emmert, Attorney General of the State of Indiana, State House, Indianapolis, Indiana, and to counsel for the several appellants as follows: Daniel W. Knowlton, Interstate Commerce Commission, Washington, D. C.; Daniel W. Kunkel, Interstate Commerce Commission, Washington, D. C.; B. Howard Coughran, United States District Attorney, U. S. Court House and Postoffice Bldg., Indianapolis, Indiana; Edward Dumbauld, Office, of Attorney General of the United States, Washington, D. C.; Edward M. Reidy, Interstate Commerce Commission, Washington, D. C.; Harry E. Yockey and Kirkwood Yockey, 1250-1255 Consolidated Bldg., Indianapolis 4, Indiana; A. M. Donnan, 925 Pennsylvania Station, Pittsburgh, Pennsylvania; Oscar Lindstrand, 652 Union Station Bldg., Chicago, Illinois.

FRED I. KING,
Fred I. King.

1008 Odd Fellow Building,
Indianapolis 4, Indiana.

Subscribed and sworn to this 30th day of August 1944.

[SEAL] WALTER F. GURLEY,

Notary Public.

My Commission expires Jan. 13, 1947.

171 [Clerk's certificate to foregoing transcript omitted in printing.]

Plaintiff's Exhibit No. 1

171-A APPLICATION FOR CHANGE OR EXTENSION OF OPERATIONS

(Before answering, read General Instructions on page 3)

BEFORE THE INTERSTATE COMMERCE COMMISSION

Application of the Willett Company of Indiana, Inc., a corporation of the State of Indiana, 323 West Polk Street, Chicago, Illinois.

Applicant hereby applies for the appropriate authority to
(check applicable status):
■ extended on operation
operate over an alternate route
change a route or operation
engage in dual operations
as a
ommon carrier
contract carrier
of_
passengers,
⊠ property,
by motor vehicle in interstate or foreign commerce, transporting
the following commodities (a property carrier of general com-
modities should name exceptions, if any; and a passenger carrier
should name newspapers, express, mail, and/or baggage of pas-
sengers, if such property is to be transported, and should state
whether baggage of passengers is to be transported in the same
vehicle with passengers or in separate vehicles) commodities gen-
erally over ⊠ regular or □ irregular routes (a common carrier of
passengers should check the irregular route square only if the ap-
plication involves special and charter operations which are not
authorized under section 208 (c), Interstate Commerce Act, as in-
cidental to operations over regular routes) from Fort Wayne, In-
diana to Grand Rapids, Michigan, as follows: Grand Rapids, Mich-
igan to Cadillac, Michigan; Cadillac, Michigan to Mackinaw City,
Michigan. Cadillac, Michigan to Traverse City, Michigan. Cad-
illac, Michigan to Falmouth, Michigan. Grand Rapids, Michigan
to Muskegon, Michigan:
See Exhibit "E".
On return movements applicant proposes: It to engage in the
same operation; I to furnish NO transportation for compensa-
tion; to transport empty containers used in the operation de-
scribed above; \(\subseteq \text{ to transport rejected shipments; and/or } \subseteq to
transport the following commodities: See Exhibit "E".
Intermediate and off-route points to be served which applicant
is not now serving: See Exhibit "E".
Applicant is operating at present between —— and —— as
follows: See Exhibit "F".
Applicant [] has or [X] has not received authority from the State
Board(s) to engage in intrastate commerce over the proposed route,
including service to the following intermediate and off-route
points: Applications for authority to engage in intrastate com-
merce over the proposed route will be the subject of applications
to appropriate State Boards.

A map of the proposed operation, also outlining any alternate route and any route to be changed or extended, is attached hereto and made a part hereof. Any change, interruption, or discontinuance of operations by applicant is explained by Exhibit "A," attached hereto and made a part hereof.

The proposed operation will be: \(\) year-round or \(\) seasonal between \(\) and \(\) approximately \(\) times each \(\) on schedule, \(\) on call.

Applicant proposes to use approximately seven tractor-trailer units motor vehicles in the above-described service.

Previous application(s) under part II, Interstate Commerce Act, is (are) filed under Docket No(s). MC See Exhibit "G".

171-B. In support of this application, applicant submits the following exhibits, attached hereto and made a part hereof:

EXHIBIT "B" showing that applicant is fit, willing, and able properly to perform the service proposed and to conform to the applicable provisions of the Interstate Commerce Act, and the requirements, rules, and regulations of the Commission thereunder;

Exhibit "C" showing that the proposed common carrier operation is or will be required by the present or future public convenience and necessity, or that the proposed contract carrier operation will be consistent with the public interest and the national, transportation policy declared in the said act.

Applicant will furnish such additional information as the Com-

mission may request.

If the Commission assigns a formal hearing upon this application, applicant requests that it be held at Indianapolis, Ind.

Applicant will introduce approximately 25 witnesses at the hearing, and will require approximately 2 days to present evidence. The number of days and witnesses, is the estimate placed by the applicant based upon its experience in prior hearings.

Applicant understands that the filing of this application does

not in itself constitute authority to operate.

DATH

STATE OF PENNSYLVANIA,

County of Philadelphia, 88:

Geo. G. Young makes oath and says that he is the President of the Willett Company of Indiana, Inc.; that he is authorized on the part of said applicant to verify and file with the Interstate Commerce Commission this application and exhibits attached thereto; that he has carefully examined all of the statements contained in such application and the exhibits attached thereto and made a part thereof; that he has knowledge of the matters set forth therein and that all such statements made and matters set forth therein are true and correct to the best of his knowledge, information, and belief; affiant further says that the applicant makes this application intending in good faith to present evidence which the applicant believes will support the application as to each of the States within which authority to operate is sought herein.

GEO. G. YOUNG.

Subscribed and sworn to before me, a Notary Public in and for the State and County above named, this 30th day of August 1941.

[SEAL]

J. P. BREUNINGER.

My commission expires January 27, 1945.

CERTIFICATE OF SERVICE

A copy of this application was delivered, in person or by registered or receipted mail, to each of the following State Boards or officials: Public Service Commission of Indiana, Indianapolis, Indiana; Public Service Commission, Lansing, Michigan,

A notice of the filing of this application, Form BMC 15 (Revised), was delivered, in person or by registered or receipted mail, to the following competitors by motor vehicle, rail, or water (applicants should carefully follow the Commission's order requiring that the applicant notify each motor carrier, railroad, or water carrier, known to the applicant, with whose service the operations described in the application are or will be directly competitive). Applicant has no knowledge of any other motor carrier operating in the territory covered by this application, with whose operations the service herein proposed would be competitive

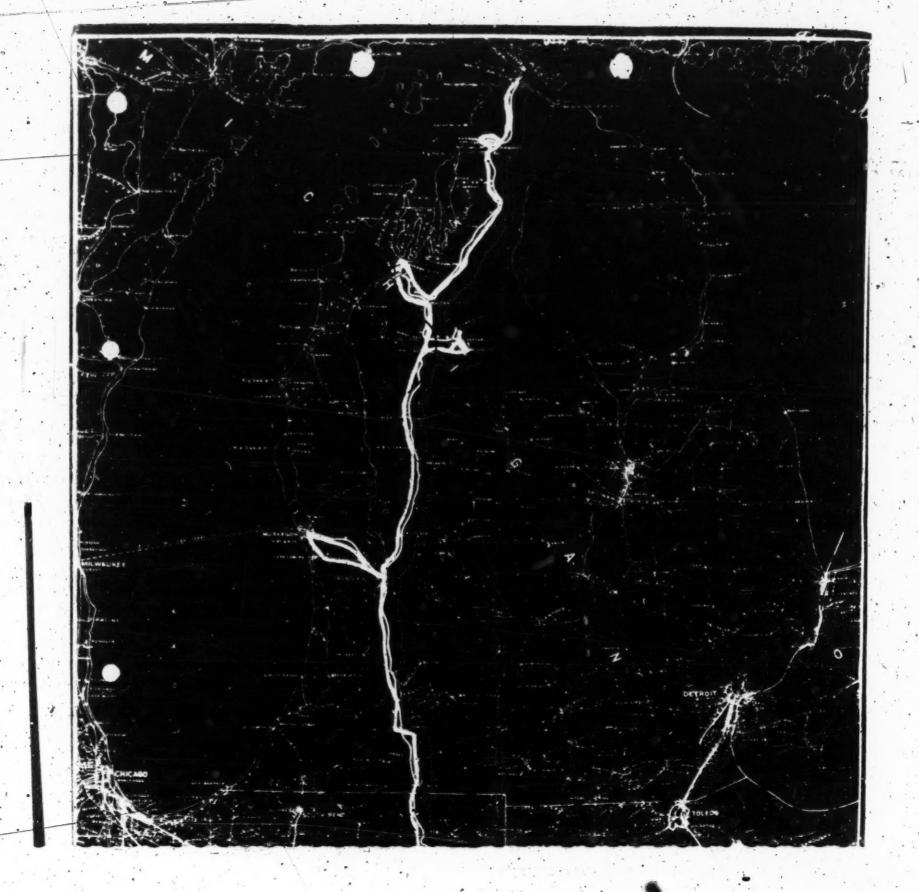
(Signed) By ______, McNess, Hollinger & Nurick, General Counsel,

Date Sept. 5, 1941.

Note.—Protests, to receive consideration, must be filed with the Commission, by delivery in person or by registered or receipted mail, within 10 days after receipt of notice of filing of the application. A copy of the protest should be served likewise upon the applicant.

McNess, Hollinger & Nurick, State Street, Building, Harrisburg, Pa., Counsel for Applicant.

HARRY E. YOCKEY, Esq., 1250 Consolidated Building, Indianapolis, Ind. Plaintiff's Exhibit No. 1



171-D THE WILLETT COMPANY OF INDIANA, INC.

Ехнівіт А

Not applicable, as this application does not relate to change, interruption, or discontinuance of operations:

171-E THE WILLETT COMPANY OF INDIANA, INC.

(Name of Applicant)

EXHIBIT B.

(a) George G. Young, President of Applicant, has been associated with the trucking industry for about twenty-five years. During the past three years he has been President of all the trucking companies embraced in what may be called "The Pennsylvania Railroad Trucking System," involving companies whose operations are conducted in the territory covered by the entire Pennsylvania Railroad. For about seven years prior thereto, he was Vice-President of several of the larger companies in that trucking system. He is thoroughly conversant with the operations and management of Applicant and the various phases of truck transportation operations.

Joseph P. McArdle, Vice-President and Manager of Applicant, has been identified with the trucking industry for more than twenty years. He has been Vice-President and Manager of Applicant for five years and is engaged in the active management of the operations of Applicant. He is thoroughly conversant with

the various phases of truck transportation operations.

B. B. Young, Secretary and Assistant Treasurer of Applicant has had contact with and experience in the field of motor truck

operations for many years.

(b) It is proposed to use -7- tractor-trailer units in the operation herein applied for; and the only terminal facilities proposed to be used will be the station platforms of The Pennsylvania Railroad Company. Applicant now has garage facilities at Logansport, Indiana and Fort Wayne, Indiana, and plans to inaugurate garage facilities at additional points along the route referred to herein.

(c) Applicant has sufficient financial resources to conduct the operation, as well as sufficient reserve of units of equipment of various types to properly handle all traffic which may be offered.

Attached hereto, marked "Exhibit B-1", are Balance Sheet Statement and Profit and Loss Statement of Applicant, as of May, 31, 1941.

171-F THE WILLETT COMPANY OF INDIANA, INC.

(Name of Applicant)

EXHIBIT B-1.

GENERAL BALANCE SHEET

May 31, 1941

	May 31, 1941	2.00	
Assets:			14.1
Current assets:		1.0	
Cash, working funds a	and special denosits		\$20, 491. 4
Notes and accounts re			14, 245, 9
Interest and dividends	receivable		1, 031. 2
Material and supplies	receivable		1, 384, 3
Other current assets			340. 1
Other Chrient assets			510. 1
Total current assets		***	87, 493. 0
	1 2 1 .		
	Cost	Depreciation	
Tangible property		\$22, 118, 35	38, 618. 3
Intangible property		8, 347, 47	454. 10
Investment securities and		0, 011. 11	20,1. 1
Associated communica	advances.		2.
Associated companies Others			99 000 0
Others			23, 000. 0
Total investment see	curities and advance	es	23, 000, 0
		* * * *	
Deferred debits			4, 066. 0
Total assets			*\$103, 631. 6
Aabilities:			
Current liabilities:			
Notes, accounts and w	ages, payable		\$2,702.2
Taxes and interest ac	crued		5, 692. 4
Accrued insurance			3, 494. 2
Accrued insurance Other current liabilit	les		45. 0
Total current liabili	ties		11, 933. 9
	(* *		
			210.9
Reserves			
Capital stock:			
Common capital stock			70, 000, 0
Unappropriated surphis			21, 486, 7
			, 1001
Total liabilities			\$108 631 6
			4100, 001.0
		- 1 1 1 1 1	
PROFIT	AND LOSS STATEME	NT	
	May 31, 1941		
	may 01, 1011		
	A. A		

\$15, 405, 51 6, 081, 22

Earned surplus at beginning of year______ Credit balance transferred from income account.

Earned surplus as of May 31, 1941.

171-G THE WILLETT COMPANY OF INDIANA, INC.

(Name of Applicant)

EXHIBIT C

(a) Applicant is a subsidiary of the Pennsylvania Railroad Company through ownership of 100% of its capital stock by American Contract and Trust Company, which latter Company is owner 100% by the Pennsylvania Railroad Company. The said Railroad Company also owns a number of other motor truck subsidiaries.

The service herein proposed will be in substitution for service by rail in the transportation of freight moving under railroad tariffs and railroad bills of lading. Same will further co-ordinate the rail and motor truck service of the Pennsylvania Railroad Company and permit expedition and economy in the transportation service of said Railroad Company in accordance with its obligations under the Transportation Act of 1920 and in compliance with the principles laid down in the Report of the Interstate Commerce Commission in Ex Parte 129.

(b) Applicant has no knowledge of any other motor carrier operating in the territory covered by this application, with whose operations the service herein proposed would be competitive.

(c) The proposed service will, in Applicant's opinion, be highly beneficial to the shipping and receiving public. It will not in any way affect or impair any of the other operations of Applicant.

171-H THE WILLETT COMPANY OF INDIANA, INC.

(Name of Applicant)

Ехнівіт D

The names and addresses of the Directors and Officers of Applicant are as follows:

DIRECTORS

H. E. Newcomet, Union Station, Chicago, Illinois.

J. M. Symes, Union Station, Chicago, Illinois.

F. R. Gerard, Union Station, Chicago, Illinois.

B. B. Young, Union Station, Chicago, Illinois.

Jno. C. Rill, Broad Street Station Building, Philadelphia, Pa. Geo. J. Adams, Broad Street Station Building, Philadelphia, Pa.

Geo. G. Young, 1000 South Broad Street, Philadelphia, Pa.

OFFICERS

Geo. G. Young, President, 1000 South Broad Street, Philadelphia, Pa.

J. P. McArdle, Vice President and Manager, 323-West Polk

Street, Chicago, Ill.

B. B. Young, Secretary and Asst. Treasurer, Union Station, Chicago, Illinois.

171-I THE WILLETT COMPANY OF INDIANA, INC.

(Name of Applicant)

EXHIBIT E

The routes over which it is proposed to operate between Fort Wayne, Indiana, and Mackinaw City, Michigan, are as follows:

Between Fort Wayne, Ind., and Grand Rapids, Mich.: From Fort Wayne, over Indiana Highway 3 to Kendallville, Indiana, thence over U.S. highway 6 to junction with Indiana Highway 9; thence over Indiana Highway 9 to junction with Michigan Highway 78 at the Indiana-Michigan State Line; thence over Michigan Highway No. 78 to junction with Michigan Highway 7, near Nottawa; thence over Michigan Highway 7 to Nottawa; thence over County Reads, through Mendon and Vicksburg to Junction with U.S. Highway 131 at Schoolcraft; thence over U.S. Highway 131 to Grand Rapids and return over the same route. Intermediate points to be served: Wallen, Huntértown, Laotto, Avilla, Kendallville, Rome City, Wolcottville, La Grange, and Howe, all in Indiana, and Sturgis, Nottawa, Mendon, Vicksburg, Kalamazoo, County Spur, Plainwell, Martin, Shelbyville, Wayland, and Moline, all in Michigan. No off-route points to be served. From Kendallville, Indiana, over County Road to Rome City, Indiana. No intermediate or off-route points to be served. From Nottawa. Michigan, over Michigan Highway 7 to Three Rivers; thence over U. S. Highway 131 to Schoolcraft, Michigan. No intermediate or off-route points to be served.

Between Grand Rapids, Michigan, and Cadillac, Michigan: From Grand Rapids, over U. S. Highway 131 to Cadillac, and return over the same route. Intermediate points to be served: Rockford, Cedar Springs, Sand Lake, Pierson, Howard City, Morley, Stanwood, Big Rapids, Paris, Reed City, Orino, Ashton, LeRoy, and Tustin, Michigan. No eff-route points to be served. From Grand Rapids over County Roads, through Comstock Park and Belmont to junction with U. S. Highway 131, north of Grand Rapids. Intermediate points to be served: Belmont. No off-route

points to be served.

171-J THE WILLETT COMPANY OF INDIANA, INC.

(Name of Applicant)

EXHIBIT E

Between Cadillac, Michigan, and Mackinaw City, Michigan. From Cadillac over U. S. Highway 131 to Petoskey, thence over U. S. Highway 31 to Mackinaw City, and return over the same route. Intermediate points to be served. Manton; Fife Lake, South Boardman, Kalkaska, Mancelona, Alba, Elmira, Boyne Falls, Wailoon Lake, Petoskey, Bay View, Kegomic, Conway, Oden, Alanson, Brutus, Pellston, Levering, and Carp Lake, Michigan. No off-route points to be served. From Kegomic over U. S. Highway 131 to Harbor Springs, thence over said Highway and County Roads to Conway. Intermediate points to be served. Harbor Springs. No off-route points to be served.

Between Cadillac, Michigan, and Traverse City, Michigan. From Cadillac over U. S. Highway 131 to Walton, thence over County Road 113 to Kingsley; thence over County Road 611 to Traverse City and return over the same route. Intermediate points to be served: Manton, Kingsley, and Mayfield, Michigan. No off-route points to be served. From Walton over Michigan Highway 113 to junction with Michigan Highway 42, thence over Michigan Highway 42 to junction with U. S. Highway 31, thence over U. S. Highway 31 to Traverse City.

No intermediate or

off-route points to be served.

Between Cadillac, Michigan, and Falmouth, Michigan. From Cadillac over Michigan Highway 55 to Lake City, thence over said Highway and County Roads to Falmouth, and return over the same route. Intermediate points to be served: Lake City, Michigan. No off-route points to be served. From Cadillac, over Michigan Highway 55 and County Roads, through Lucas, to Falmouth. No intermediate or off-route points to be served.

Between Grand Rapids, Michigan, and Muskegon, Michigan. From Grand Rapids, over U. S. Highway 16 to Coopersville, thence over County Roads, through Conklin, Ravenna, and Sullivan to junction with Michigan Highway 46; thence over Michigan Highway 46 to junction with U. S. Highway 31, thence over U. S. Highway 31 to Muskegon, and return over the same route. Intermediate points to be served: Ravenna and Conklin. No offroute points to be served. From Grand Rapids, over U. S. Highway 16 to Nunica, thence over Michigan Highway 126 to Muskegon. No intermediate or off-route points to be served.

171-K THE WILLETT COMPANY OF INDIANA, INC. (Name of Applicant)

EXHIBIT F

Applicant is operating at present between the following points: Logansport, Ind. and Columbus, Ind.; Fort Wayne, Ind. and Plymouth, Ind.; Fort Wayne, Ind. and Butler, Ind.; Fort Wayne, Ind. and Indiana-Ohio State Line; MC 2815—"Grandfather" Clause application. Compliance Order issued by Division 5 of Commission, August 13, 1940.

Columbus, Ind. and Madison, Ind.; Effingham, Ill. and East St. Louis, Ill.; Terre Haute, Ind. and Effingham, Ill.; Indianapolis, Ind. and Louisville, Ky.; Indianapolis, Ind. and Terre Haute, Ind.; Logansport, Ind. and Union City, Ind.; MC 2815 (BMC 10). Certificate issued by Commission, February 14, 1940.

Fort Wayne, Ind. and Richmond, Ind.; Logansport, Ind. and Richmond, Ind.; Indianapolis, Ind. and Richmond, Ind.; Columbus, Ind. and Madison, Ind.; MC 2815, Sub 1. Certificate issued by Commission, February 14, 1940.

Indianapolis, Ind. and Logansport, Ind.; Indianapolis, Ind. and Vincennes, Ind.; MC 2815, Sub 2. Certificate issued by Commision, February 14, 1940.

Union City, Ind. and Bradford, Ohio; MC 2815, Sub 3. Favorable recommended Order by Joint Board 58, May 13, 1941.

Logansport, Ind. and Chicago, Ill.; Chicago, Ill. and Plymouth, Ind.; Terre Haute, Ind. and Decatur, Ill.; MC 2815, Sub 4. Favorable recommended Order by Joint Board 58, May 13, 1941.

Logansport, Ind and Effner, Ind.; Logansport, Ind. and South Bend, Ind.; Cambridge City, Ind. and Columbus, Ind.; Terre Haute, Ind. and Frankfort, Ind.; Indianapolis, Ind. and Shelbyville, Ind.; Indianapolis, Ind. and Rushville, Ind.; MC 2815, Sub 5. Favorable recommended Order by Joint Board 58, May 13, 1941.

On the 30th day of June, 1941, the Interstate Commerce Commission issued its certificate authorizing the operation of all ten (10) routes under MC 2815 Sub Nos. 3, 4, and 5.

171-L THE WILLETT COMPANY OF INDIANA, INC. (Name of Applicant)

Ехнівіт С

Applications have been filed by Applicant under Part II of the Interstate Commerce Act and docketed at MC 2815 ("Grandfather" Clause application in connection with which Compliance Order was issued under date of August 13, 1940, by Division 5 of the Commission) and MC 2815 (BMC 10), MC 2815 Subs 1 and 2, which were approved by the Commission and certificates issued under date of February 14, 1940. The latter three authorized substituted service for The Pennsylvania Railroad Company over various designated routes.

Said certificates, however, do not affect the instant proceeding.

171-N. APPLICATION FOR EXTENSION OF OPERATIONS

BEFORE THE

INTERSTATE COMMERCE COMMISSION

APPLICATION OF THE WILLETT COMPANY OF INDIANA, INC.

No. MC 2815 Sub 6

Amendment

I

Applicant is a corporation duly organized and existing under and by virtue of the laws of the State of Indiana with its principal office and place of business at 1250 Consolidated Building, Indianapolis, Indiana, and its operating office at 323 West Polk Street, Chicago, Illinois.

11

Applicant heretofore filed its extension application herein with the Interstate Commerce Commission on the 8th day of September 1941, wherein it sought authority to transport commodities generally by motor vehicles over regular routes as a common carrier of property in interstate and foreign commerce over the following routes: From Fort Wayne, Indiana, to Grand Rapids, Michigan; from Grand Rapids, Michigan, to Cadillac, Michigan; from Cadillac, Michigan, to Mackinaw City, Michigan; from Cadillac, Michigan to Traverse City, Michigan; from Cadillac, Michigan, to Falmouth, Michigan; from Grand Rapids, Michigan, to Muskegon, Michigan.

III

Applicant desires to amend said application by adding thereto and including therein an additional route as follows:

From Lake City, Michigan, to Manton, Michigan, over the following route: From Lake City, Michigan, over Michigan Highway 66 to its junction with Michigan Highway 42; thence over Michigan Highway 42 to Manton, Michigan and return over the same route; serving Lake City, Michigan and Manton, Michigan, but no intermediate points.

171-O IV

Applicant hereby amends its said application MC 2815 Sub No. 6 in the following particulars:

1. By adding to the routes listed on page 1 of said application the following route:

From Lake City, Michigan, to Manton, Michigan.

2. By adding to the route description in Exhibit "E" contained in said application the following:

In addition to the routes set forth in said application the applicant desires to operate over an additional route, as follows:

From Lake City, Michigan, to Manton, Michigan, as follows: From Lake City, Michigan, over Michigan Highway 66 to its junction with Michigan Highway 42; thence over Michigan Highway 42 to Manton, Michigan, and return over the same route; Intermediate points to be served: None. Lake City and Manton to be served, no off-route points to be served; subject to the approval of the Interstate Commerce Commission.

V

Wherefore, applicant respectfully prays that the foregoing amendments be allowed and that said application be considered amended in said particulars.

Respectfully submitted.

THE WILLERT COMPANY OF INDIANA, INC. By Jos. McArdle, Vice President.

Dated this 10 day of January 1942.

171-P

OATH

STATE OF ILLINOIS,

County of Cook. ss:

Joseph P. McArdle makes oath and says that he is the Vice-President of The Willett Company of Indiana, Inc.; that he is authorized on the part of said applicant to verify and file with the Interstate Commerce Commission this amendment to said application and exhibits attached thereto; that he has carefully examined all of the statements contained in such application and the exhibits attached thereto and made a part thereof; that he has knowledge of the matters set forth therein and that all such statements made and matters set forth therein are true and correct to the best of his knowledge, information, and belief; affiant further says that the

applicant makes this amendment to said application intending in good faith to present evidence which the applicant believes will support the application as to each of the States within which authority to operate is sought herein.

Joseph P. McArdle.

Subscribed and sworn to before me, a Notary Public in and for the State and County above named, this 10 day of January 1942.

SEAL .

Notary Public.

My commission expires October 11, 1942.

CERTIFICATE OF SERVICE

A copy of this amendment to said application was delivered, in person or by registered or receipted mail, to each of the following State Boards or officials: Public Service Commission of Indiana, Indianapolis, Indiana, Public Service Commission, Lansing, Michigan.

A notice of the filing of this amendment to said application, Form BMC 15 (Revised), was delivered, in person or by registered or receipted mail, to the following competitors by motor vehicle, rail or water (applicants should carefully follow the Commission's order requiring that the applicant notify each motor carrier, railroad, or water carrier, known to the applicant, with whose service the operations described in this application are or will be directly competitive): Holland Motor Express, Inc., 1 West 5th Street, Holland, Michigan; Tri-State Motor Express, Benton Harbor, Michigan; Interstate Motor Freight System, Grand Rapids, Michigan; Associated Freight Lines, Grand Rapids, Michigan; Wolverine Express, Inc., Muskegon, Michigan; Parker Motor Freight, Petoskey, Michigan; Dallas L. Carling, 319 Stransing St., Grand Rapids, Michigan; McVickers Bros. Motor Freight Lines, Scottsville, Michigan: Rooks Transfer Lines, Holland, Michigan: Midway Transit Company, Benton Harbor, Michigan.

(Signed) HARRY E. YOEKEY, Counsel for Applicant.

Dated January 12, 1944.

McNees, Hollinger, & Nurick, State St. Bldg. Harrisburg, Pennsylvania

HARRY E. YCCKEY,

1250 Consolidated Bldg.,
Indianapolis, Indiana,
Counsel for Applicant,

Before the Interstate Commerce Commission

Docket No. MC 2815 (Sub No. 6) (Form BMC 74)

In the Matter of the Application, as amended, of The Willett Company of Indiana, Inc., of 323 West Polk Street, Chicago, Illinois, Filed September 8, 1941, for a Certificate of Public Convenience and Necessity, Form BMC 74, Authorizing Extension of Operations as a Common Carrier by Motor Vehicle in the Transportation of General Commodities, in Interstate or Foreign Commerce, in the States of Indiana and Michigan, Over Specified Regular Routes

STATE HOUSE,

Indianapolis, Indiana, February 10, 1942.

Met, pursuant to notice at 9:30 o'clock a. m.

Before Joint Board No. 23, represented by Oliver H. Eggers, Indiana; Richard H. Barkell, Michigan.

Present : REECE HARRISON, Examiner.

Appearances: Harry E. Yockey, and Kirkwood Yockey, 1250
Consolidated Building, Indianapolis, Indiana; and Earl
W. Munshaw, 1024 Michigan Trust Building, Grand Rapids,
Michigan, appearing for applicant.

Oscar Lindstrand, 652 Union Station Building, Chicago, Illinois, appearing for The Pennsylvania Railroad Company, inter-

venor in support of application.

Claude H. Anderson, and Warren G. Moberly, 601 Illinois Building, Indianapolis, Indiana, appearing for Wolverine Express, Inc.; Dallas L. Darling; Parker Motor Freight; McVicker Bros. Motor Freight Lines; Days Transfer, Inc.; and O. I. M. Transit Corporation.

K. F. Clardy, 712 Olds Tower, Lansing, Michigan, appearing for

Interstate Motor Freight System, Inc.

Robert Des Roches, 2379 National Bank Building, Detroit, Michigan, appearing for Associated Truck Lines, and Holland Motor Express.

Fred I. King, 1008-9 Odd Fellow Building, Indianapolis, Indiana, appearing for Norwalk Truck Line Company, and Norwalk

Truck Line Company of Indiana, Inc.

George O. Cowan, 315 Security Trust Building, Indianapolis, Indiana, appearing for Commercial Motor Freight, Inc. of Indiana.

W. J. Guenther, 520 Illinois Building, Indianapolis, Indiana. appearing for Keeshin Motor Express Co., Inc.

Mr. EGOERS. Come to order, please, gentlemen. The Interstate Commerce Commission has set for hearing at this time and place, cause No. MC 2815, Sub No. 6, in the matter of the application, as amended, of the The Willett Company of Indiana, Inc., of 323 West Polk Street, Chicago, Illinois, for a certificate of public convenience and necessity, authorizing extension of operations as a common carrier by motor vehicle in the transportation of general commodities, in interstate or foreign commerce, in the states of Indiana and Michigan, over regular routes as set out in the notice of hearing: This case has been assigned by the Commission for hearing to Joint Board No. 23, composed of the states of Michigan and Indiana. The Michigan member of the Joint Board, Mr. Richard H. Barkell, is present; and also the Indiana member, Oliver H. Eggers. Also sitting with the Joint Board is Examiner Reece Harrison, of the Interstate Commerce Commission, Washington, D. C.

We will take the appearances. Who appears for applicant?

Mr. Kirkwood Yockey. Harry E. Yockey and Kirkwood Yockey, 1250 Consolidated Building, Indianapolis, Indiana; and Earl W. Munshaw, 1024 Michigan Trust Building, Grand Rapids, Michigan. We are all attorneys, and have been admitted to practice before the Interstate Commerce Commission; and we are all present in the hearing room at this time.

Mr. EGGERS. Who appears for protestants?

Mr. Anderson. Claude H. Anderson and Warren C. Moberly, 601 Illinois Building, Indianapolis, Indiana, attorneys and registered practitioners before the Interstate Commerce Commission, appearing for Wolverine Express, Inc., of Muskegon, Michigan, Parker Motor Freight, of Petoskey, Michigan, and others, as indicated on the written appearance blank which has been handed to the Reporter.

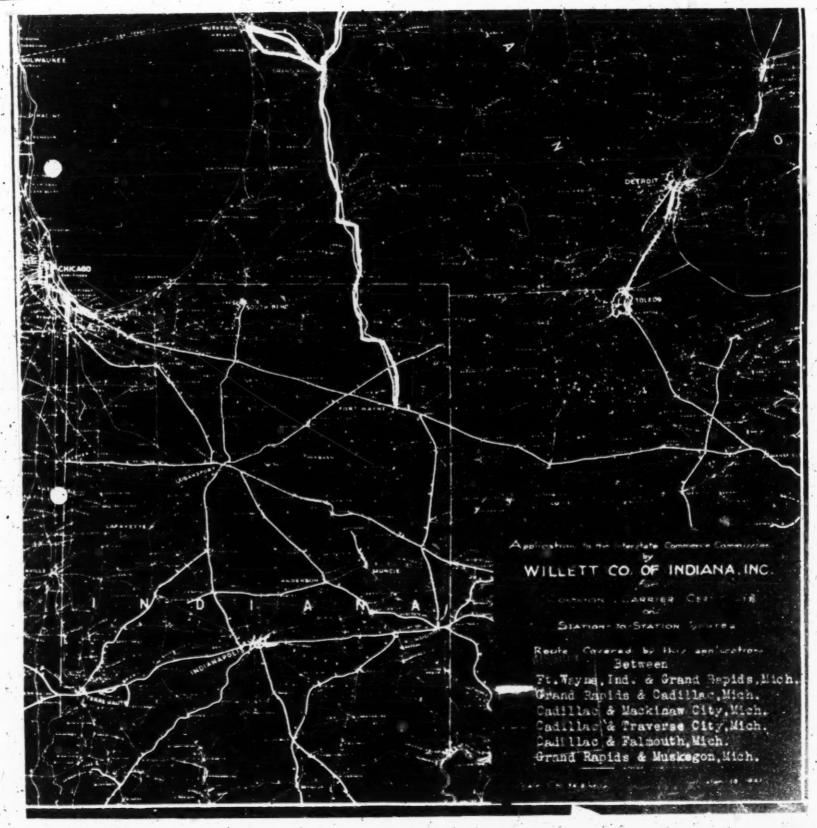
Mr. Cowan. George O. Cowan. 315 Security Trust Building, Indianapolis, Indiana, representing Commercial Motor Freight, Inc. of Indiana. I am an attorney at law, and have been duly admitted to practice before the Interstate Commerce Commis-

sion.

.4

Mr. Des Roches. Robert R. Des Roches, 2379 National Bank Building, Detroit, Michigan, attorney at law and licensed to practice before the Interstate Commerce Commission, appearing for Associated Truck Lines, and Holland Motor Express.

Mr. CLARDY. K. F. Clardy, 712 Olds Tower, Lansing, Michigan, appearing for Interstate Motor Freight System. I am an attor-



ney, and a registered practitioner before the Interstate Commerce Commission.

Mr. King. Fred I. King, 1008-9 Odd Fellow Building, Indianapolis, Indiana, appearing for Norwalk Truck Line Company of Norwalk, Ohio, and Norwalk Truck Line Company of Indiana, Inc., of Fort Wayne, Indiana. I am an attorney at law, and have

been duly admitted to practice before the Interstate Com-

6 a merce Commission.

Mr. Guenther. Let the record show the appearance of W. J. Guenther, 520 Illinois Building, Indianapolis, Indiana, for protestant Keeshin Motor Express Co., Inc. I am an attorney at law, and have been admitted to practice before the Interstate Commerce Commission.

Mr. Eggers. Are there any other appearances for protestants? (No response.) Are there any appearances for intervenors?

Mr. Lindstrand. Yes, your Honor; I wish to enter the appearance of Oscar Lindstrand, 652 Union Station Building, Chicago, Illinois, appearing for Pennsylvania Railroad Company as an intervenor in support of the application of The Willett Company of Indiana, Inc.

Mr. EGGERS. Are there any further appearances for intervenors? (No response.) Let the record show no response. Is the

applicant ready to proceed. Mr. Yockey?

Mr. HARRY YOCKEY. Yes.

Mr. Eggers. You may proceed.

Mr. HARRY YOCKEY. If the Joint Board please, I think it would be advisable, perhaps, to make a short opening statement, if I may.

Mr. Eggers. Yes.

Opening statement

Mr. HARRY YOCKEY. There has been filed an application in this particular case, an original application, to which has been assigned No. MC 2815, Sub 6, wherein the applicant. The

7. Willett Company of Indiana, Inc., is seeking authority to

operate over six different routes as named in the application, and as will be shown in the evidence. These particular six routes cover the Pennsylvania Railroad, that is to say, they parallel the Pennsylvania Railroad from Fort Wayne, Indiana up north of Mackinaw City, Michigan, including the branches and feeder lines of railroad that emanate from the main line, which are described in the application. It was found at a later date that, inadvertently, there had been a short segment of a route omitted from the original application; and there was therefore, duly filed with the Commission an amended application, about 30 or 40 days ago, wherein the application was amended by adding a short route over highways 66 and 42, I believe, from Lake City to Manton, Michigan; and so the hearing that we have here is on the application as amended. Now, that amendment was allowed by the Commission, and notice was sent out by the Commission, taking care of the amendment. Now, as to this operation here: we believe the evidence will show that The Willett Company of Indiana. Inc., is an Indiana corporation, that has been engaged, since 1933, in station-to-station operations solely for The Pennsylvania Railroad, with the exception that in some places, like Grand Rapids, Michigan and Louisville, Kentucky, there is an additional service, where the applicant is performing a local pick-up and delivery service. However, that particular service is not involved

in this application. That is the sole business of the applicant, as the evidence will show. It is engaged in hauling no freight for anybody, except The Pennsylvania Railroad. These particular routes that we have set out in the application. and all of them, parallel the Pennsylvania Railroad; and the operation is a station-to-station operation. In other words, it is proposed by The Pennsylvania Railroad to turn over to the applicant herein, in the particular situation involved in this case, if the application is granted, the right to transport its less than carload freight by truck to the intermediate stations along the railroad. In some of the other cases there has been written into the certificate what is known as the "prior and subsequent movement by rail" clause, so called. When I say, in some of the other cases, I mean generally railroad cases, beginning with the Kansas City Southern case. Our evidence will show that we do not desire that particular clause inserted in this particular certificate. Since the date referred to, the Commission has been removing, or at least, not inserting that clause in some of the other certificates of carriers, including our own. We have one certificate that has already been issued, covering one of our other 25 routes, in which the Commission has inserted the so-called key-point clause. Now, we are going to request in this case, based on the evidence here, that there be inserted in this certificate, if a certificate be granted to us, certain key-points, in lieu of the so-called "prior and subse-

quent movement by rail" clause. The evidence in this case will show that this applicant is not in the general trucking business; it hands for nobody, as I say, excepting The Pennsylvania Railroad; it has no bills of lading, it has no freight bills; it has no relationship whatsoever with the general public. It only desires to transport this freight for The Pennsylvania Railroad, in what is known as station-to-station operation. The freight at the present time is moving on the bills of lading and freight bills of The Pennsylvania Railroad, and it will continue to move on the bills of lading and freight bills of The Pennsylvania Railroad. This applicant, the evidence will show, has no soliciting depart-

It does not solicit freight. All it does is what I have just narrated. In this particular instance, The Pennsylvania Railroad is asking to enter into a contract, and it has entered into a contract, or contracts, with the applicant, to haul this freight for the rail-The applicant is a wholly-owned subsidiary of The Pennsylvania Railroad. In other words, the evidence here will show that The Willett Company of Indiana, Inc. is owned by the American Contract & Trust Company of Philadelphia, and that all of . the stock of the American Contract & Trust Company of Philadelphia is owned by The Pennsylvania Railroad. The evidence here will further show that The Pennsylvania Railroad does not care to enter into this kind of an arrangement with other truck The Pennsylvania Railroad has employed, and this is what

the evidence will show, the applicant to perform this same kind of service over 25 other routes in Indiana and Illinois.

going as far west as East St. Louis, Illinois, and as far south as Louisville, Kentucky. In other words, they now have all of the western region, practically, west of the Indiana-Ohio state line. with the exception of one or two small routes; and it is that same type of service that we are seeking here. In other words, there are seven routes involved here, and The Pennsylvania Railroad desires that all of the service be performed by one carrier, and the railroad wants The Willett Company to be that one carrier, its own sub-As I say, the evidence here will show that the applicant is a subsidiary of The Pennsylvania Railroad.

Mr. Anderson. If your Honor please, might I interrupt Mr.

Yockey just briefly at this point, to ask him a question?

Exam. Harrison. If Mr. Yockey has no objection.

Mr. HARRY YOCKEY. Go ahead.

Mr. Anderson. I think it would be well, in fact, I think it would be very helpful, and probably save some time, Mr. Yockey, if while you are making your opening statement, you would go a little further and explain what you call the key-point system; and also endeavor to distinguish for us clearly the difference between what you are requesting in that connection, and the "prior and subsequent movement by rail" proposition. Will you do that?

Mr. HARRY YOCKEY. Yes, I will; I will be very glad to. I think, as you say, it will save some time in the long run.

Exam. HARRISON. Yes.

Mr. HARRY YOCKEY. The "prior and subsequent movement by rail" clause referred to, is this, that no freight can be moved by truck-that is by the subsidiary in this case-unless it has had a part-movement by rail, either before or after. In other words, to give an illustration, a shipment that might come from New York. say to Fort Wayne, Indiana, for delivery along any of these particular lines involved herein, could be hauled by truck anywhere

along these lines, clear north, if there was the "prior and subsequent movement by rail" clause inserted in the certificate, because it would have had a prior or subsequent movement by rail. On the other hand, to give you another illustration, suppose the shipment came in over one of these other 25 routes by truck, in the present operation. It would have to have, subsequent to that, some rail movement, the object being, of course, to insure that it would be a railroad operation. Now then, our evidence here will show that in some instances,—and it is not a large amount, or a large number of instances, but in some instances—sufficient to be material, that "prior and subsequent rail movement" clause is detrimental to the railroad, in its operation through this truck line, in the rest of its movement. Now, then, going to the key-point proposition—or rather, first, is that plain so far?

Mr. Anderson. Yes, I have always understood that.

Mr. HARRY YOCKEY. Is that plain to everybody so far? If not, I am perfectly willing to make any further explanation that may be desired. Now, then, this key-point restriction that has been inserted by the Commission in some of the certificates, says that the applicant shall not transport any freight to, through, or from any particular two or more key-points, that will be named. Now, to give you an illustration of that in this case, we are going to ask that Fort Wayne, Indiana and Grand Rapids, Michigan be made key-points. That would mean that any freight that originates at Fort Wayne, and is destined for delivery at Grand Rapids, or at any point beyond that point, cannot be transported by truck. In other words, we would have to haul that freight by rail; that is, I mean, in our operation, with that restriction, we would have to haul that freight from Fort Wayne to Grand Rapids by rail; and if it was for local delivery in Grand Rapids, of course, it would be delivered locally; but it would be carried there by rail. If it was for delivery beyond that point, we will say, on the line that operates immediately north of there, from Grand Rapids to Cadillac, Michigan, we could carry it, then, to an intermediate point, or to intermediate points along there by Now, in the reverse direction, the same thing would be true; that is, anything originating north of Grand Rapids, or in Grand Rapids, for delivery to Fort Wayne, or points beyond Fort

Wayne, would have to be carried by rail from Grand Rapids, or from any point north of there to Fort Wayne, because otherwise, if we did not do it that way, it would be going to, through, or from two key points; and there is no desire upon the part of The Pennsylvania Railroad to have this applicant haul in all instances its less than carload freight. The railroad company wants to haul it as far as possible, and in every practical way, by railroad, and the main purpose of this operation

is to handle the delivery of less than carload freight to intermediate stations along the line.

Mr. BARKELL. Mr. Yockey, may I interrupt you right there.

Mr. HARRY YOCKEY. Certainly.

Mr. BARKELL. I still do not just understand the difference between the two methods, or the two operations. Does not the keypoint system require a rail movement?

Mr. HARRY YOCKEY. No, it does not.

Mr. BARKELL. Not at all?

Mr. Harry Yockey. No, it does not. However, the Commission feels, in inserting that, that it does insure that it will keep that railroad business; and it is the intention of the applicant here to do that. And I will say this, that whether the restriction is in there or not, whether there is any restriction in there or not, that is the manner in which we would operate; and before we had any restriction, that was the manner in which we operated. In other

words, between Indianapolis, Indiana and Louisville, Ken-14 tucky, where we have certificates at the present time, we never have hauled freight by truck, and it never was the intention to haul freight by truck between Indianapolis and Louisville even before we had any rectriction.

ville, even before we had any restriction.

Mr. Anderson. Do you care to give us a statement, Mr. Yockey, at this time, of all of the key-points on these routes.

Mr. HARRY YOCKEY. I just stated them.

Mr. EGGERS. Mr. Yockey, I was just going to ask you this question: What determines the establishment of the key points? What are the elements taken into consideration, in other words, in estab-

lishing the key points; and who determines that?

Mr. Harry Yockey. The two key points that I have just named, are Grand Rapids, Mchigan, and Fort Wayne, Indiana. Now, we believe that those two points are the only points that are involved here, as far as interstate commerce is concerned, because this particular line, you understand, originates at Fort Wayne—that is, it comes from Fort Wayne north, and by the time you get a short distance, every bit of freight, of course, as far as this application is concerned, is interstate freight.

Mr. BARKELL. As far as key points are concerned, then, you do not want any more key points than those two; is that correct?

Mr. HARRY YOCKEY. That is right, yes, sir. I do not want to take the time now to attempt to go minutely into what the evidence will show, but our railroad witness. Mr. Christie, will go

15 into the details of the key-point proposition, and all of these other matters.

Mr. Eggers. All right.

Mr. HARRY YOCKEY. Unless you want me to take the time to explain further just at this time.

Mr. EGGERS. No.

Mr. HARRY YOCKEY. I think it would just unduly consume time. I think it would be preferable to wait for the testimony. However, is there any other question at this time?

Mr. Anderson. Yes. You have not named the key points as yet,

as I understand it.

Mr. HARRY YOCKEY. I named two of them, Grand Rapids, Mich-

igan, and Fort Wayne, Indiana.

Mr. Anderson. Do you want to name any of the rest of them at this time?

Mr. HARRY YOCKEY. Pardon me?

Mr. Anderson. Do you care to name any of the rest of the key points for us at this time?

Mr. HARRY YOCKEY. Those are the only two key points that we

are asking for.

Mr. Anderson. The only thing was, you are requesting a restriction as to key points in this application, making that definite request, and I thought that we ought to have all of the key points stated for the record at this time. However, as I understand it now, the only two key points that you are requesting are Grand.

Rapids, Michigan, and Fort Wayne, Indiana.

6 Mr. HARRY YOCKEY. Yes:

Mr. Anderson. Now, there is this other question also: if, as you say, you expect this business to be all railroad business, and not to be in competition with the common carriers by motor vehicle, why are you unwilling to have the "prior and subsequent rail movement" clause inserted in your request in this application, or in your certificate, if one is granted?

Mr. HARRY YOCKEY. Well, that would undoubtedly hamper us

in connection with a percentage of our business.

Mr. Anderson. Well, is it not true-

Mr. HARRY YOCKEY. However, as I stated a moment ago, Mr. Christie will go into that fully when he goes on the witness stand.

Mr. Anderson. Well, then, there is just this further question: is it not true, then, that by submitting this application without the "prior and subsequent movement by rail" clause, there will be nothing whatsoever in the authority of granted, giving any assurance whatsoever that it will be limited to rail business, or making any requirement whatsoever, that it will be limited to rail business?

Mr. HARRY YOCKEY. Well, in every other certificate that we have, the Commission has limited us to the type of business that I have described here. In every one of our other certificates there have

been inserted certain restrictions and limitations; and I would just take it for granted, as a matter of policy, without our attempting to go into it in this application, that the

Commission is going to put restrictions in this certificate, if one is issued; and we are willing to stipulate that the restriction which we have requested, shall go into the certificate here when issued.

Mr. Eggers. Are you speaking only of the key-point restrictions

now?

Mr. HARRY YOCKEY. I say, we are willing to do that.

Mr. Eggers. As the key-point restriction?

Mr. HARRY YOCKEY. Yes.

Mr. Eggens. Are there other restrictions?

Mr. Anderson. Yes, there are some others.

Mr. HARRY YOCKEY. In addition to the key-point restriction, and the "prior and subsequent rail movement" clause restriction, there are set forth in there other restrictions with respect to the certificate. Shall I read them?

Mr. Anderson. No, that is not necessary. That is all clear, as far as I am concerned, but I do not want to ask one further ques-

tion, now, in view of your statement, if I may.

Mr. Eggers. Yes.

Mr. Anderson. What is to keep you from soliciting business at Fort Wayne, for any point on the route between Fort Wayne, Indiana and Grand Rapids, Michigan, and moving that business wholly by truck?

Mr. HARRY YOCKEY. To whont do you refer when you say

"vou"?

Mr. Anderson. I am referring to the applicant, The Wil-

lett Company.

Mr. HARRY YOCKEY. The applicant does not solicit any freight from anybody. It has no solicitors, and it is not going to have.

Mr. Anderson. Well, anybody who does the soliciting, then,-

The Pennsylvania Railroad, say.

Mr. HARRY YOCKEY. I do not understand the question.

Mr. ANDERSON. The question is, if the authority should be granted here, as prayed for, what is to keep The Pennsylvania Railroad from soliciting business in Fort Wayne, for any point on this route intermediate to Grand Rapids, and moving it wholly by truck?.

Mr. HARRY YOCKEY. At this particular time, their solicitors are soliciting freight from every point on the railroad. Their tariffs

require them to serve every point on the railroad.

Mr. Anderson. You are not answering my question, Mr. Yockey.

Mr. HARRY YOCKEY. I will in just a moment.

Mr. ANDERSON. All right.

Mr. HARRY YOCKEY. As far as that particular less than carload freight is concerned, Mr. Christie will testify that there is only a small amount of freight involved between those points, and in this service, for instance, the railroad, just taking this as an illustration, will take off of its local freight trains between Fort Wayne and Grand Rapids, the less than carload freight, and that means the less than carload cars. Now, then, if the railroad takes those cars off, the railroad cannot fill its obligation to the public, to serve each and all of those points along the line; so that if it takes those cars off, it is going to be compelled to send it by truck. But as I say, the amount of that business is a negligible amount. They are doing that on all of these other 25 routes that are in effect at the present time, and nobody has suffered. I have been in every one of those cases from the beginning, I might say, and I have never yet seen one iota of business on any of those 25 routes, in connection with which anybody has been damaged thereby.

Mr.Anderson. Well, all this is argumentative, of course. Now,

will you answer my question, please.

Mr. HARRY YOCKEY. I did.

Mr. Anderson. No. Pardon me. You did not. I have asked.

you a specific question.

Mr. HARRY YOCKEY. I say, The Pennsylvania Railroad is compelled under its tariffs to take all of the business it can get, and it is soliciting business to and from every point on the railroad.

Mr. Anderson. Yes.

Mr. HARRY YOCKEY. And it will do that.

Mr. Anderson. We all understand that perfectly, Mr. Yockey, but you are still evading my question.

Mr. HARRY YOCKEY. I am not evading any question at all.

I say, they will do that.

Mr. And I say, I have asked you a specific question, and you are still evading it.

Mr. HARRY YOCKEY. I have answered the question.

Mr. Anderson. No, you have not.

Mr. HARRY YOCKEY. I made the statement that there is no intention on the part of the applicant to solicit freight.

Mr. Anderson. That does not answer my question. Will you answer the question, please.

Mr. Eggers. Just a moment.

Mr. Anderson. Yes, your Honor?

Mr. EGGERS. I think Mr. Yockey has answered your question, Mr. Anderson.

Mr. Anderson. Well, I respectfully submit that he has not, your Honor.

Mr. EGGERS. Just a moment: You asked him whether or not The Willett Company or The Pennsylvania Railroad solicitors will solicit freight between Fort Wayne and points intermediate—

Mr. ANDERSON: No.

Mr. Eggers. For delivery at Grand Rapids—did you not?

Mr. Anderson. No, your Honor, that was not my question at all.

Mr. HARRY YOCKEY. That is what I understood the question to be.

Mr. Anderson. I may not have expressed it very clearly, although I thought I did. Just to shorten it, then, your Honor, may I make a statement—

Mr. Eggers. Yes.

Mr. Anderson. Of my understanding of Mr. Yockey's statement?

Mr. Eggers. All right.

Mr. Anderson, I want to see if I understood you correctly, Mr. Yockey.

Mr. HARRY YOCKEY. Yes.

Mr. Anderson. I understand you to say that you will, either directly or indirectly, get the business, either through solicitation by Pennsylvania Railroad solicitors, or—whether you call them solicitors of The Pennsylvania Railroad or of the trucking company, at any rate, you will accept less than truckload business, and haul it between any two sets of points on these routes, as amended, with the exception of a direction operation between the two key points.

Mr. HARRY YOCKEY. Well, now-

Mr. Anderson. Is what what you said?

Mr. HARRY YOCKEY. Well, now, that depends on what you mean by "between."

Exam. Harrison. Can you answer that question yes or no, Mr. Yockev?

Mr. HARRY YOCKEY. No, your Honor, I cannot answer the question yes or no, because it depends on what Mr. Anderson means by "between the two key points."

Mr. Anderson. mean, either way.

Mr. HARRY YOCKEY. We do not desire-

Mr. Anderson. From Fort Wayne to Grand Rapids, or from Grand Rapids to Fort Wayne; either way.

Mr. HARRY YOCKEY. We do not desire to haul between the key points, that is, from one key point to another.

Mr. Anderson. And all other points will be served exactly as any other truck line would serve them, will they not?

Mr. HARRY YOCKEY. No; I will not say that; definitely not; no.

Mr. Anderson. Well, you will at least attempt to serve them,
although you cannot do as good a job.

Mr. HARRY YOCKEY. No: definitely not.

Mr. Eccess. Well, now, gentlemen, I think a lot of these matters can be brought out in the evidence.

Mr. ANDERSON. Yes.

Mr. Eggers. Particularly on cross examination.

Mr. HARRY YOCKEY. Yes.

Mr. Anderson. I think I understand Mr. Yockey now, and it is just what I said, my understanding now is the same as it was before; but as your Honor says, I think perhaps we can develop it better from the witnesses.

better from the witnesses.

23 Mr. EGGERS. I think so.

Mr. CLARDY. There is one thing further, your Honorand I say this at this time because I do not want my brother to claim to be taken by surprise later on. My client is very much of the opinion that the decisions of the Interstate Commerce Commission that have been referred to by my brother, are grievously in error, from the standpoint of the law; and I want him to understand at this time that I am going to try this case on the theory that the railroad, or anyone else, is exactly on the same footing, and that public convenience and necessity must be shown by the applicant, exactly as though my client were the applicant. In other words, I am going to try this case on the basis of a trial of 'the issues in court, if need be, when the matter has been concluded here, if the case is not decided exactly as it would be in every other instance. I say that because I think that the Commission has erred in the decisions that Mr. Yockev has referred to, and I think that this presents an excellent opportunity to try out in court. if necessary, all of those issues.

Mr. HARRY YOCKEY. We will not be surprised by anything that

Mr. Clardy does.

Mr. Clarov. I did not think you would be, but I just wanted you to be apprised at this time of our intentions in the matter, because I do not want you to say later that you did not understand that

Mr. EGGERS. All right, now, gentlemen. Have you any

further opening statement to make, Mr. Yockey! .

Mr. HARRY YOCKEY. I believe not.

Mr. Eggers. Mr. Anderson, would you like to make a brief statement?

Mr. Anderson. Yes.

Exam. Harrison. Please make it brief, Mr. Anderson.

Mr. Anderson. Yes, I will, your Honor, because I only want to call attention to one or two points, and I think I should have that privilege, inasmuch as the remarks of Mr. Yockey have gone into the record, and we appreciate them, of course. I just want to point out to the Joint Board and the Commission that The Willett Com-

pany asked for authority in its previous applications, on business which had moved rail prior, or would move rail subsequent to the truck haul. We could all understand that, and that did keep it to the rail business. Now, we submit, and I believe the evidence will show that they throw it wide open when they merely talk about key-point business. This key-point proposition does not mean anything, except for the two points. And I submit that Mr, Yockey has not even yet answered my question, and I submit further that the evidence will show that this authority, if granted as prayed for in the application as amended, will give them the same right to haul business by motor truck, without regard to rail at all, except between those two key points, just as if there

were no railroad whatever involved. For that reason we take the same position that Mr. Clardy does, as just outlined by him, that the applicant must be placed on the same basis as if the XYZ Motor Company was coming in here and asking for this authority; it must be viewed in exactly the same way.

Mr. EGGERS. All right.

Mr. Cowan. If your Honor please.

Mr. Eggers. Mr. Cowan?

Mr. Cowan. May I ask one question of Mr. Yockey?

Mr. EGGERS. Make it short.

Mr. HARRY YOCKEY. Yes.

Mr. Cowan. This is an application for common carrier authority, I take it; is that correct?

Mr. HARRY YOCKEY. Yes.

Mr. Cowan. Thank you.

Mr. EGGERS. All right. Now, are you ready to proceed with your evidence, Mr. Yockey?

Mr. HARRY YOCKEY. Yes.

Mr. EGGERS, You may call your first witness, please.

Mr. HARRY YOCKEY. Mr. Christie, please. I may say, if your Honor please, Mr. Anderson has suggested that we distribute our maps at this time, and I think it is a good suggestion, so I am going to pass them out right now, so that everybody may have them right

from the start. We have two maps which we intend to introduce, and I will ask to have them marked as soon as I

have identified the witness.

Mr. Eggers. Very well.

E. M. Christie was sworn and testified as follows:

Direct examination by Mr. HARRY YOCKEY:

Q. You may state your name.

A. E. M. Christie.

Q. Where do you live?

A. Fort Wayne, Indiana.

Q. By whom are you employed?

A. The Pennsylvania Railroad Company.

Q. How long have you been so employed!

A. Over 35 years.

Q. In what capacity?

A. As supervising agent, on special duty.

Q. Assigned to what type of duty?

- A. Assigned to the duty of finding ways and means for The Pennsylvania Railroad to better serve its patrons by utilizing motor trucks.
 - Q. How long have you been assigned to that particular duty?

A: Since April, 1935.

Q. In what territory?

A. In the territory known as the Western Region, which includes part of the states of Ohio and Kentucky, and the states of Illinois, Indiana, and Michigan.

Q. Now, then, during your employment by The Pennsylvania Railroad, have you had anything to do with the

movement of carload and less than carload freight?

A. During all of my employment I have been in the transportation department, engaged in the handling of freight.

Q. Including both carload and less than carload freight?

A. Yes.

Q. Now, then, prior to your assignment to special duty, as you have just described, did you have any connection in any capacity with station-to-station truck routes?

A. Yes, sir; I did. While I was on the Fort Wayne division I established the first station-to-station truck route in the Western

Region of The Pennsylvania Railroad.

Q. When was that first station-to-station route established?

A. In April, 1932.

Q. Have you been connected with The Willett Company of Indiana, the applicant herein, at any time?

A. Yes.

Q. In what capacity?

A. Director.

Q. When was that?

· A. That was in 1935 and 1936.

Q. What were your duties?

A. I was assigned to making studies of the station-to-station work in connection with The Pennsylvania Railroad; to appear for The Willett Company in all hearings; to establish the operation of The Willett Company, and to see that it worked properly.

Q. And did you represent The Willett Company before the Public Service Commission of Indiana and the Interstate Com-

merce Commission in those hearings?

A. Yes.

Q. Those that came up during that period?

A. Yes, sir.

Q. So that generally you are acquainted, are you, with the service that is being performed by The Pennsylvania Railroad, and also The Willett Company?

A. Yes.

Q. Now, then, are you acquainted with the service—or rather, with the 25 routes that are in operation by The Willett Company, at the present time for The Pennsylvania Railroad?

A. Yes.

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Q. With all of them?

A. Yes, sir.

Q. Did you have anything to do with establishing and laying out those 25 routes?

A. Yes, sir; I did. I either established or helped to establish all of them.

Mr. HARRY YOCKEY. Mr. Reporter, applicant's exhibit No. 1 for identification, please.

(Exhibit 1, Witness Christie, marked for identification.)

By Mr. HARRY YOCKEY:

Q. Now, Mr. Christie, I will hand you what has been marked by the Reporter as applicant's exhibit No. 1 for identification, and will ask you to state for the record what that is.

A. This exhibit No. 1 for identification is a map showing the route of The Pennsylvania Railroad and the route of The Willett Company of Indiana which serves The Pennsylvania Railroad on what is known as the 25 routes at the present time in operation.

Q. Now, then, is there set forth on this map a delineation of

The Pennsylvania Railroad?

A. Yes, sir; The Pennsylvania Railroad is shown in the heavy black lines on the map.

Q. And are the routes of The Willett Company also shown on

this particular map?

A. Yes, sir; the routes of The Willett Company are shown on the map in the red lines.

Q. Those are the 25 routes referred to?

A. Yes.

Q. And are those 25 routes in operation at the present time!

A. Yes, sir.

Q. And those are the routes that you either established or helped to establish; is that correct?

A. Yes; sir.

Q. Are all of those routes in operation at this particular

30 A. Yes, sir.

Mr. HARRY YOCKEY. Mr. Reporter, applicant's exhibit 2 for identification.

(Exhibit 2, Witness Christie, marked for identification.)

By Mr. HARRY YOCKEY:

Q. Now, then, I will hand you what has been marked by the Reporter as applicant's exhibit No. 2 for identification, and will ask you to state what that is.

A. This is a map, showing the route of the Pennsylvania Railroad, and the proposed route of The Willett Company of Indiana,

that is being covered, or that is involved, at this time.

Q. You mean, those are the routes covered by the application now on hearing; is that correct?

A. Yes, sir.

- Q. Now, you will notice in the corner of the map, the lower right hand corner of the map, where there is set forth a list of the routes, there has been one omission from that map, has there not?
 - A. Yes.
 - Q. What omission is that?
 - A. The Lake City-to-Manton route is not included on this map.
 - Q. Is not included in the list, you mean? .
 - A. Yes.
 - Q. However, it is included on the map, is it not?
 - A. Yes, sir.
- Q. Now, do the black lines shown on the map indicate the Pennsylvania Railroad?

A. Yes, sir.

- Q. The heavy lines.
- A. Yes, sir.
- Q. And do the red lines indicate the proposed route of The Willett Company of Indiana, Inc.?
 - A. Yes, sir.
- Q. So that the exhibit, this particular exhibit, is correct, with the exception of having left off the description, at the bottom, as far as that reading matter is concerned, of the Lake-City-to-Manton route; is that correct?
 - A. Yes, sir.
- Q. All right. Now, do these two maps, exhibits 1 and 2 for identification, attempt to show the highways that are traveled by the applicant over the 25 routes referred to—or rather, exhibit 1, I should say?
- A. No, sir; it does not. It simply shows the route of the Pennsylvania Railroad, and that part of the Pennsylvania Railroad that is covered by The Willet Company.

Q. And is the same thing true with respect to exhibit No. 2 for identification?

A. Yes.

Q. Showing the proposed routes?

A. Yes.

Q. If the exact routes were set out on these maps, they would be zigzag, would they not?

A. Yes, sir.

Q. Generally speaking, are the routes longer or shorter by rail than they are by truck?

A. The routes are generally longer by truck than they are by

rail.

A. Longer by truck?

A. Yes.

Q. Who prepared these two exhibits?

A. They were prepared by our map department.

Q. Are they correct?

A. (Continuing.) Under my direction and supervision.

Q. Are they correct descriptions and delineations of the routes to which you have referred?

A. Yes, sir.

Mr. HARRY YOCKEY. If the Board please, we offer these two exhibits in evidence at this time.

Mr. Eggers. Is there any objection?

Mr. Anderson. No objection. Mr. Moberly. No objection.

Mr. EGGERS. There being no objection, applicant's exhibits Nos. 1 and 2 will be accepted and considered as read in evidence.

(Exhibits 1 and 2, Witness Christie, received in evidence.)

Mr. HARRY YOCKEY. Mr. Reporter, applicant's exhibit No.

33 3 for identification, please.

(Exhibit No. 3, Witness Christie, marked for identifica-

By Mr. HARRY YOCKEY:

Q. Mr. Christie, I will hand you what has been marked as applicant's exhibit No. 3 for identification, and will ask you to state for the record what that is.

A. This exhibit No. 3 for identification is a list of the present routes of The Willett Company of Indiana, in operation, as well as the proposed routes in this hearing, involved in this hearing.

Q. Referring to the last group of routes set forth in this particular exhibit, headed "Proposed routes covered by application MC 2815; Sub 6": those are the routes that are set forth on applicant's exhibit No. 2, are they?

A. Yes.

Q. And the ones that are involved in this particular hearing?

A. Yes.

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Q. And the ones set forth on that exhibit immediately prior to that—that is, the routes that are set forth on the exhibit immediately prior to that, namely, the ones that are denominated "Grandfather application MC 2815," and the next ones, MC 2815, BMC 10, the next ones, MC 2815 Sub 1, the next ones, MC 2815, Sub 2, the next ones, MC 2815, Sub 3, the next ones, MC 2815, Sub 4, and the next ones, MC 2815, Sub 5: are those the routes that are set forth, as described by you as being 25 in number, on applicant's exhibit

No. 1 here?

A. Yes, sir.

Mr. HARRY YOCKEY. We offer applicant's exhibit No. 3 for identification in evidence.

Mr. EGGERS. Is there any objection?

Mr. Anderson. No objection.

Mr. Moberly. No objection.

Mr. Eccess. There being no objection, applicant's exhibit No. 3 will be accepted and considered as read in evidence.

(Exhibit 3, Witness Christie, received in evidence.).

By Mr. HARRY YOCKEY:

Q. Well, now, Mr. Christie, are you at the present time employed by The Willett Company of Indiana?

A. No, sir.

Q. Are you employed by anybody else other than The Pennsylvania Railroad Company?

A. No.

Q. Now, then, in laying out these routes that are now in operation, did you perform any services for The Pennsylvania Railroad?

A. I did.

Q. What were those services?

A. I located the routes over which the trucks of The Willett Company were to travel into and out of the stations to be served on The Pennsylvania Railroad; I made changes in the loading classification of The Pennsylvania Railroad, to best connect with

the trucks; and I studied the schedules of freight train service on The Pennsylvania Railroad, in order to make

those changes.

Q. And was it a part of your duties to determine whether or not a particular route should or should not be operated by the rail-truck method of operation?

A. It was, yes.

Q. As a part of your duties for the railroad—and when, in the course of my examination here, I may just refer to "the railroad,"

you will understand, of course, that I mean The Pennsylvania Railroad.

A. Yes.

Q. Was it a part of your duties for the railroad to make a study of the railroad train service, and establish the schedules for those routes?

A. Yes.

Q. Did you study that service?

A. I did study the service, yes, sir and the cost of the freight train service, and made the schedules.

Q. And did you have anything to do with making or supervising the making of the schedules for the truck operation?

A. I prepared the schedules required by the trucking company

for The Pennsylvania Railroad.

Q. Well, now then, in connection with the services which you have performed for The Willett Company, and also as a director

of that company, were you acquainted with the cities and towns that were being served at that particular time?

A. Yes.

Q. And are you at the present time acquainted with the service that is being rendered over these particular 25 routes?

A. Yes.

Q. What is the fact as to whether or not part of your duties for The Pennsylvania Railroad had anything to do with familiarizing yourself, and keeping yourself familiarized, with the cities and towns that are served?

A. It was a part of my duty, and it is a part of my duty at the present time to be familiar with the trucking operations performed

for The Pennsylvania Railroad by The Willett Company.

Q. Well, now then, what is the purpose of The Pennsylvania Railroad in instituting this station-to-station truck service, not only on the 25 routes, but also in wanting to establish it on the

routes which are covered by this application?

A. The purpose of The Pennsylvania Railroad in this matter is to supplement the rail service, by truck service, in order that we may expedite the movement of freight for the patrons of the railroad; to make it a more economical operation; and to eliminate the use of boxcars, which will result in heavier loading of cars on our railroad.

Q. Does it have in view also the ability to conserve the use of boxcars?

A. Yes, sir. By doing that we would conserve the use of many boxcars, or as I said, eliminate the use of them, which is the same thing.

Q. Now, what type of service does that involve? That is, I mean, that The Willett Company is now performing, and that you

desire to have it perform, as to whether it is carload or less-thancarload freight.

A. Less-than-carload freight.

Q. Only?

A. Yes, sir.

Q. Now, then, by the use of trucks in station-to-station service, in lieu of way freight cars, are you able to load merchandise cars

heavier on The Pennsylvania Railroad?

A. Yes, sir; we are. In 1937 the merchandise cars on The Pennsylvania Railroad averaged 2.84 tons per car. In 1941 they averaged 7.97 tons per car; and they have gone as high as 8.63 tons per car.

Q. What, if you know, has been responsible for the heavier load-

ing of cars on The Pennsylvania Railroad?

A. The main reason for heavier loading of those cars is the elimination of the lightly loaded way freight cars, which freight is handled in station-to-station truck service.

Q. Why does The Pennsylvania Railroad want to save those

cars?

A. We desire to save those cars to take care of the carload business, both for National Defense, and for private industry.

Q. Well, now then, just what do you mean by a way car,

38 or a way freight car?

A. That is a car that is loaded with freight for various destinations, that is unloaded by the crew of the local freight train.

Q. What kind of a train does such a car operate in, our it oper-

ated by?

A. It is operated in a local train that runs from point to point on The Pennsylvania Railroad, and serves all intermediate stations.

Q. Well, now then, would you mind just giving us an illustration of a freight train moving from, we will say; Fort Wayne, Indiana, north to Kalamazoo, Michigan, Just how does such a way car operate, and what is it that you desire to eliminate, in con-

nection with its operation, if anything?

A. Well, for example, we will load a car out of Fort Wayne, Indiana, containing freight for points north, and this car will leave Fort-Wayne in our local train to Kalamazoo, Michigan; and at any station intermediate, Fort Wayne to Kalamazoo, that they might have freight for, the local will stop at that station, and the crew will go through the car, and find the freight and unload it into the freight station at the particular point.

Q. The local way car, then, is in a local freight train?

A. Yes.

Q. That would move, in the instration which you have just given, between Fort Wayne, Indiana, and Kalamazoo, Michigan.

39 A. Yes.

Q. And it is the desire, if I understand your testimony correctly, of the Pennsylvania Railroad, to take off that local car!

A. Yes, sir.

Q. And only haul, on the local freight train, carload shipments, or in the main, carload shipments?

A. Yes, sir.

Q. But it does desire to continue the local freight train, in the service of carload shipment?

A. Yes, sir.

Q. In this type of service which you are asking for here, and that is now being performed on the 25 routes, that is, in lieu of the way car service, the truck type of service that you are asking for here: it is the desire to have the truck carry the less than carload freight between those stations; is that correct?

A. Yes, sir; that is correct. The truck will carry the less than carload freight that is at the present time being carried in the way

car, in the local freight train.

Now, then, regarding the commodities that are involved in the less than carload freight where you desire this service performed: what are the requirements as to the kind of merchandise to be delivered by The Pennsylvania Railroad to The Willett Company for transportation along these new routes?

A. It will be commodities generally; all less than carload

40 freight of The Pennsylvania Railroad.

Q. Now, then, what are the requirements for service along these particular lines?

A. (No answer.)

Q. In other words, Mr. Christie, what does the Pennsylvania Railroad require of the applicant here?

A. We require The Willett Company to transport this freight

from station to station, on The Pennsylvania Railroad.

Q. Now, with respect to picking up freight, over the same territory that you just used in your illustration, between Fort Wayne, Indiana, and Kalamazoo, Michigan: after the truck picks up freight at Fort Wayne, and travels north, in addition to delivering the freight to local stations that was delivered to it at Fort Wayne for delivery at those intermediate points, does it also pick up freight?

A. Yes.

Q. Describe that operation if you will, please.

dler freight cars. In other words, it will leave Fort Wayne with

freight for the various stations north, and it will unload freight at any station that it may have freight for; and in addition to that, it will pick-up outbound freight and take it to another station, to be forwarded on the train.

Q. When it gets to the other station, that is, when the freight gets to the other station, is it then picked up by a freight

41 train and carried to its ultimate destination?

A. When it gets to destination—that is, I mean, when the truck gets to destination, any freight for points beyond will be unloaded, and generally speaking, it is loaded in a freight car and has a rail haul.

Q. Now, then, referring to this service which you have described in its entirety: is that in operation at this particular time by The Willett Company of Indiana, for The Pennsylvania Railroad, over the 25 routes which you have mentioned?

. A. Yes.

Q. And will the service which you have just desribed be required and put into operation over the seven routes described in this application now on hearing—that is, by The Pennsylvania Railroad through The Willett Company?

A. Yes.

Q. Now, I believe you have testified there are no carload shipments involved.

A. That is correct; yes, sir. There are no carload shipments involved.

Q. Will the railroad company at any time attempt to turn over carload shipments to The Willett Company, the applicant?

A. No, sir: it will not.

Q. Now, Mr. Christie, in the proposed operation of the seven routes involved herein, is it the intention to have these trucks operated on any kind of a regular schedule?

42 A. Yes.

Q. Have you had anything to do regarding the time schedules which will be put into operation on the proposed routes?

A. Yes, sir: I have. I prepared the schedules which The Pennsylvania Railroad will require on these routes, and I consulted with the applicant to see whether or not it can conform with the schedules required.

Q. Have you done that in the present instance? That is, have you consulted with the applicant to see whether or not it can follow certain schedules, to conform with the operation of your freight

trains?

A. Yes, sir.

Q. Has there been prepared a schedule of the type you have described, which is going to be put into operation on these routes?

A. Yes, sir.

Mr. HARRY YOCKEY. Mr. Reporter, applicant's exhibit No. 4 for identification, please.

(Exhibit 4, Witness Christie, marked for identification.)

By Mr. HARRY YOCKEY:

Q. Mr. Christie, I hand you now what has been marked by the Reporter as applicant's exhibit No. 4 for identification, and will ask you to state what that is.

A. This exhibit 4 for identification is the proposed schedule which it is expected will be put into effect on these routes, if the

application be granted.

Q. Who prepared that list, or that schedule, or under whose direction and supervision was it prepared!

A. I prepared it myself.

Mr. YOCKEY. If the Board please, we offer applicant's exhibit 4 for identification in evidence.

Mr. EGGERS. Is there any objection?

Mr. Anderson. No objection.

Mr. Clardy. There seems to be a little bit of a misnomer on the exhibit. It says "Proposed routes," and it should say "Proposed schedules," should it not?

Mr. HARRY YOCKLEY. Well, now, I think that is a good suggestion, your Honor. Let us just change that, right on the exhibit, if we may,

Mr. EGGERS. Yes.

Mr. Harry Ycckey. Let us say "Proposed schedule of routes." Is that satisfactory?

Mr. Eggers. "Proposed schedule of routes"?

Mr. HARRY YOCKEY. Yes. .

Mr. EGGERS. Is there any objection to the proposed amendment of applicant's exhibit 4 for identification?

Mr. Anderson. No objection here.

Mr. Eggers. There being no objection, the amendment will be made, right on the face of the exhibit, and applicant's exhibit 4 will be accepted and considered as read in evidence.

(Exhibit 4, Witness Christie, received in evidence.)

By Mr. HARRY YOCKEY:

Q. Mr. Christie, are these schedules as set forth in applicant's exhibit No. 4 satisfactory to The Pennsylvania Railroad!

A. Yes, sir.

Mr. HARRY YOCKEY. Mr. Reporter, applicant's exhibit No. 5 for identification, please.

(Exhibit 5, Witness Christie, marked for identification.)

By Mr. HARRY YOCKEY:

Q. Mr. Christie, I hand you what has been marked applicant's exhibit 5 for identification, which is headed "Pennsylvania Railroad tonnage to be handled by applicant," and will ask you to identify that briefly for the record, please.

A. This exhibit 5 for identification is a statement showing the estimated monthly tonnage in pounds that The Pennsylvania Railroad will turn over to The Willett Company for handling;

and the tonnage is shown by the various routes.

Q. Do you mean, for handling on the seven routes in question?

A. Yes, sir.

Q. Who prepared this exhibit?

A. I did.

Q. Where did you get the information which is set forth in the exhibit?

A. I secured the information contained in the exhibit from the records of The Pennsylvania Railroad.

Q. From the records of the The Pennsylvania Railroad, you say?

A. Yes.

Q. In other words, are these estimates based on the actual movement of freight on The Pennsylvania Railroad at this time?

A. Yes,

· C. Upon what did you base your estimates?

A. I based the estimates on the monthly summaries of 1941.

Mr. HARRY YOCKEY. If the Board please, at this time I offer applicant's exhibit No. 5 for identification in evidence—or rather, pardon me just a moment. Let me withdraw that offer for the moment, please.

Mr. EGGERS. Yes.

By Mr. HARRY YOCKEY:

Q. In this particular exhibit you have set forth the estimated tomage on each of the routes, have you not?

A. Yes.

, Mr. HARRY YOCKEY. Is there any objection, gentlemen, to my leading the witness just a little to save time?

Mr. Anderson. It is all right so far,

By Mr. HARRY YOCKEY:

Q. There is set forth on applicant's exhibit No. 5, with respect to the first route, between Fort Wayne, Indiana and Kalamazoo, Michigan, the calculation or the figures of 718,770 pounds.

Mr. BARKELL. Pardon me, Mr. Yockey, but may I interrupt you

right there for a question.

Mr. HARRY YOCKEY, Yes.

By Mr. BARKELL:

Q. Can you tell us, Mr. Christie, how much of that tonnage actually originates in Fort Wayne?

A. How is that again?

Q. I say, are you able to tell us how much of the tonnage that

you show here actually originates in Fort Wayne?

A. No, sir; I am not able to tell you that exactly, but I would say that it is very little. In other words, we make a car daily from Fort Wayne, Indiana to Kalamazoo, Michigan, and any tonnage that is in Kalamazoo, is from local points.

By Mr. HARRY YOCKEY:

Q. It is a very small amount, is it, Mr. Christie?

A. It would be a very small amount, yes, sir—that is, it would be very small, if any, and I question if there is any. I do not think that there is any; as a matter of fact, I feel sure that there is no tonnage included in that amount from Fort Wayne proper to Kalamazoo proper. I will make a positive statement to that effect.

Mr. HARRY YOCKEY. Was that all, your Honor?

Mr. BARKELL, Yes.

By Mr. HARRY YOCKEY;

Q. Now, then, Mr. Christie, the next illustration shown on exhibit 5 is the route between Grand Rapids, Michigan and Kalamazoo, Michigan, showing the figure of 217,100.

A. Yes.

Q. Is that the amount of freight that was transported by The Pennsylvania Railroad over that particular line during the month of December!

A. That is the amount of freight that will be turned over

to The Willett Company.

Q. Yes. Now, then, the next route shown on the exhibit is the route from Grand Rapids to Cadillac, Michigan, 854,620 pounds.

A. Yes.

Q. These figures all indicate pounds.

A. Yes.

Q: The next one is the route between Grand Rapids and Muskegon; 831,090 pounds.

A. Yes.

Q. The next one is the route from Cadillac to Traverse City, Michigan, 280,020 pounds; and Cadillac to Petoskey, Michigan, 225,290 pounds; and the last one is the route from Petoskey to Mackinaw City, 273,130 pounds.

A. Right.

Q. That same thing is true of them also, is it?

A. Yes, sir.

Q. Making a total of 3,400,020 pounds over these seven routes.

Q. Which you estimate will be turned over monthly to The Willett Company, if this application be granted, for transportation over these particular routes; is that right?

A. That is the estimate, based on the monthly summaries, yes,

sir.

Mr. HARRY YOCKEY. We offer applicant's exhibit No. 5

for identification, in evidence.

Mr. Eggers. Pardon me. I would like to ask one, further question with reference to this exhibit.

Mr. HARRY YOCKEY. Yes.

By Mr. Eggers:

- Q. Mr. Christie, take, for example, the first route shown on the exhibit, from Fort Wayne, Indiana to Kalamazoo, Michigan. Is that figure based on the return also?
 - A. Yes.

Q. Both ways?

A. Both ways, yes, sir.

Q. So that, when you made the statement that very little of this tonnage originated in Fort Wayne, would that statement also apply to Kalamazoo, or is there a portion of the tonnage originating in Kalamazoo, destined to Fort Wayne?

A. There is not any tonnage in there from Kalamazoo to Fort Wayne, no, sir. There is tonnage in there from Kalamazoo for

local stations, but not from Kalamazoo to Fort Wayne.

Mr. Eggers. Oh, I see.

By Mr. CLARDY:

Q. Idlid not hear that last statement, Mr. Christie. From Kalamazoo to where?

A. I say, there is no tonnage included in here from Kalamazoo to Fort Wayne, but there is tonnage from Kalamazoo to local stations along the route.

Q. Oh. Well, that might include, then, intrastate tonnage, as

well as interstate tonnage, might it not?

A. Yes. 49

Mr. Eggers, Continue.

By Mr. HARRY YOCKEY:

Q. Now, the question has been raised as to what percentage of intratate tonnage is involved-or rather, let me put the question this way: in the transportation of freight over these particular routes, what percentage is interstate and what percentage is intrastate, if you know?

A. The intrastate percentage is 8.2, so that would leave as the

interstate percentage, 91.8.

Q. So that 91.8 per cent of the transportation handled by The Pennsylvania Railroad over these particular lines of railroad involved herein, is interstate freight?

A. Yes, sir.

Q. And that is freight which it is desired, by this application here, to turn over to the applicant; is that correct?

A. Yes.

Q. For transportation over these seven routes.

A. Yes, sir.

By Mr. Eggers:

Q. Now, Mr. Christie, let me ask you one further question.

A. Yes, sir.

Q. All of these figures, these percentage figures which you just gave, apply only to applicant's exhibit No. 5, do they, or do they apply to the entire route of The Pennsylvania Railroad?

A. To exhibit 5.

50 Mr. EGGERS. I see. Thank you. Now, I believe you have offered applicant's exhibit No. 5 for identification in evidence.

Mr. HARRY YOCKEY. Yes.

Mr. Eggers. Is there any objection?

Mr. Anderson. We have no objection.

Mr. EGGERS. There being no objection, applicant's exhibit 5 will be accepted and considered as read in evidence.

(Exhibit 5, Witness Christie, received in evidence.)

By Mr. HARRY YOCKEY:

Q. Mr. Christie, have you made any study by way of a comparison between the service which is now being rendered in the all-rail movement, and the service that is being performed in the rail-and-truck service, by the applicant?

A. I have made a study of the service now being performed by The Willett Company, and the proposed rail-truck service.

Q. And you also have made a study of the old routes in time past, have you not?

A. Oh, yes.

Q. And you are acquainted with them?

A. Yes.

Mr. HARRY YOCKEY. Mr. Reporter, applicant's exhibit No. 6 for identification.

(Exhibit No. 6, Witness Christie, marked for identification.)

51 By Mr. HARRY YOCKEY:

Q. Now, Mr. Christie, I hand you what has been marked applicant's exhibit No. 6 for identification, and will ask you to

identify that for the record, if you please.

A. This exhibit No. 6 for identification is a statement showing the proposed rail-truck schedule, as compared with the all-rail schedule. It shows the shipment from point of origin to point of destination traveling all-rail; it shows the date shipped; the date and point at which transferred, the date of arrival at destination, and the number of days consumed in transit.

Q. Go ahead.

A. It also shows in comparison the same information by way

of the rail-truck method of handling.

Q. Well, now then; will you take for the purpose of illustration, the first shipments indicated on the first page of this exhibit, from New York City to Sturgis, Michigan. What do you mean by that?

· A. (No answer.)

Q. In other words, is that a shipment originating at New York

City destined for delivery at Sturgis, Michigan?

Mr. Clardy. Well, now, your Honor, I want to interpose an objection. Thus far there has been a lot of testimony introduced here dealing with the matter of convenience to the railroad, which I have not objected to because I did not think it was anything other than foundation evidence. But now I want to register

an objection to this particular question, and to any other questions that may be akin to it, on this ground, that the question itself is clearly designed to deal with an alleged improvement of the service by truck as compared with rail, and therefore that is not material or competent to the issues here involved. To merely show that the service, by instituting a truck service, can be made better than it can be if that does not exist, is no proof of public convenience and necessity. I would like to have a ruling on my objection at this time, so as to obviate the trouble of my having to make the same objection to all future similar questions; and it will be understood, I assume, that the ruling you make on this objection, will so apply, so that, as I say, it will not be necessary to repeat it in the future, if you rule against me; or, of course, if you rule with me, why, then the difficulty is over.

Mr. HARRY YOCKEY. If the Joint Board please, I do not want to consume any undue time here, but if there is any doubt in your

minds, I can give you my reasons for the question.

Mr. Ecgers: In answer to the objection interposed by Mr. Clardy, you may make a statement, Mr. Yockey, but please make it very concise and to the point, if you will.

Mr. HARRY YOCKEY. Yes, sir. This exhibit that we are submitting here, and the accompanying evidence in connection therewith, shows a comparison between the all-ray service and the rail-truck

service, that goes to the very heart of this particular case, this particular type of operation, and the reason for instituting it; and this has been one of the cardinal elements of the evidence in every one of the cases which we have heretofore presented, and in every one of those cases that has been permitted to be presented to the Commission, in all of the other station-tostation operations. It is our purpose to show by this exhibit, and this evidence, that the all-rail movement at this particular time consumes a certain amount of time, and that, by instituting the truck service in conjunction with the rail service, it will expedite the movement of the freight; and as we show on the exhibit here. that might expedite it, or cut the time down from one to two days. or from 24 to 48 hours. It has been in every one of our cases, as I say, and it is in every one of the other cases—I think probably there have been a hundred of them-that have gone up to the Commission: Now, if there is any doubt in your minds.

Mr. Eggers: Perhaps there was no objection made to the evidence at that time.

Mr. HARRY YOCKEY. Pardon me?

Mr. EGGERS: I was just suggesting, Mr. Yockey, that possibly there was not any objection made to the evidence at that time.

Mr. HARRY YOCKEY. Oh, yes; there has been objection made to

Mr. CLARDY. Your Honor, may I say further that I anticipated that that statement would be made exactly as it has been made, and in answer, I want to point out that I think the cardinal error in those other cases that counsel refers to was that in those cases they flid receive precisely this type of information, or this type of evidence. My objection in substance, can be stated rather slangily in this way, that what it amounts to is the railroad hoisting itself by its own bootstraps. It is equivalent to saving. "We are giving poor service today, and now through our left hand, instead of our right hand, we want you to make it possible for us to give a faster service, and since we will not use arryone else but the applicant, that in and of itself entitles us automatically to the right to institute a new truck service." As counsel says, that goes right to the entire heart of the case, and I want to have my objection registered thus early, and as vigorously as I can, at this time, to receiving any evidence dealing with the relationship, in any marmer whatsoever, between the parent and the child, either as an excuse or a reason, or as proof of public. convenience and necessity. In other words, it is my contention

that here and now we have, out in the open, clearly and unblushingly stated, the proposition that the railroad is giving poor service, relatively speaking, and that it can improve the service if it be granted the right to operate a truck service. It is my contention that that is not proof of public convenience and necessity, any more than if my client came in and asked for an extension on the

ground that by so doing it could better its own service. I
contend that it has no relation to the issues here, that it is
wholly irrelevant, and I would like to have it ruled on here
and now, because I do not want to have to argue it again, and I
am sure Mr. Yockey will agree with me that the decision of the
Joint Board at this time will be abided by, on both sides.

Mr. HARRY YOCKEY. Certainly.

Mr. CLARDY. As a future guide; and that will save all of our rights on either side; without having to interpose further objection to each particular question along similar lines.

Mr. Anderson. May the record show, if your Honors please, that I am joining in the objection raised by Mr. Clardy, on behalf

of my clients.

Mr. Cowan. Let the record show that I also join in the objection raised by counsel for Interstate Motor Freight System.

Mr. Ecorus: Gentlemen, we will take a short recess at this time.

Mr. HARRY YOCKEY. If the Board please, before you recess, I would just like to say that if there is still any doubt in your minds, I would like to be heard further on the matter.

Mr. EGGERS. All right.

Mr. HARRY YOCKEY. Because it is important.

Mr. EGGERS. Yes.

(A recess was taken.)

Mr. Eggers. Come to order, please, gentlemen. The objection raised by Mr. Clardy, to the question propounded to the witness last by Mr. Yockey, will be overruled; and you may show an exception on the record, Mr. Reporter, on behalf of protestants.

Mr. Clarry. Now, your Honor, will it be understood that I have a continuing objection, without being compelled to repeat it specifically each time, to all testimony dealing with that particular

subject?

Mr. Eggers. Yes; it may be so understood.

Mr. Chapty. Because I want it very clear on this record that I regard this type of testimony as merely and purely an effort to obtain the extension of authority requested here without showing public convenience and necessity, as required by the Congress; and I regard your ruling—and I say this with all due respect, of course—as constituting a gross discrimination against all of the

protestants, because of the fact that it permits the introduction into this record of a type of proof that would not be received in a

similar case, on a similar application by a motor carrier. .

Mr. HARRY YOCKY. We have no objection, of course, if the Board please, to Mr. Clardy's proposition of a continuing objection and exception. I think it will conserve time and record, if the record may just show that, and then we will not have to have the objection repeated as the question comes up.

Mr. CLARDY. Thank you.

Mr. Eggers. The record may so show. Let us proceed.

Mr. HARRY YOCKEY. Will you read the question, please,
Mr. Reporter.

(Question read.)

Mr. Mobern. Before we proceed, if the Board please, I would like to interpose an objection to that question also, for the reason that Mr. Yockey, on behalf of the applicant, is now attempting to put into the record a statement by the witness, and I assume he will continue to do so, with questions of this same nature, relative to shipments from points outside the states involved here, being the states of Indiana and Michigan. The routes covered by this application are such as to have caused this cause to be set before a Joint Board, composed of the two states of Indiana and Michigan. We now have an attempt to bring out evidence here, and to place evidence into this record, relative to shipments from without that particular territory. If we go into testimony relative to shipments from points outside of these two states, I believe that the evidence will be such as to remove this cause from the province or jurisdiction of the Joint Board.

Mr. Clardy. I would like to join in that objection, for the very practical reason that the same question was raised against my client in one of its extension applications; recently heard, and we were excluded, by the ruling of that case, from presenting

any testimony dealing with any movement between any points other than those in the territory involved in the notice.

Mr. HARRY YOCKEY. If the Board please, do you desire to hear further from me on the proposition?

Mr. EGGERS. No.

Mr. KIRKWOOD YOCKEY. The Board has ruled.

Mr. Eggers. The Board has ruled, and the objection is overruled.

Mr. CLARDY. Your Honor, may I point out, that is another reason why I think the ruling is discriminating against the protestant motor carriers, in favor of the applicant.

Mr. HARRY YOCKEY. Are you amplifying your objection, now,

as originally made in the record?

Mr. CLARDY. This is another objection.

Mr. HARRY YOCKEY. All right.

. Mr. CLARDY. I just wanted to point that out, as another reason for our contention that the Joint Board, in its ruling, is discriminating here.

Mr. MOBERLY. As I understand it, your Honor, the Reporter

will note an exception to each adverse ruling.

Mr. Eggers, Yes.

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Mr. CLARDY. The understanding is, I believe, that we are to have a continuing exception.

Mr. Eggers. Yes. Show an exception to each adverse ruling,

Mr. Reporter. Let us proceed.

By Mr. HARRY YOCKEY:

Q. Now, Mr. Christie, do you have the question in mind?
A. Yes.

Q. Will you answer it.

A. This shows a shipment originating at New York, N. Y., destrated to Sturgis, Michigan. If it travels by all-rail, and is shipped from New York on January 26th, it will be at Fort Wayne, Indiana, and be transferred at that point on January the 28th. It will arrive at destination at Sturgis, Michigan, January 29th, having consumed three days in transit. Now, if that same shipment is handled by the rail-truck method, it will leave New York on a rail car on January 26th, arrive at Fort Wayne on January 28th, and be transferred immediately to a truck, which will depart the same day for Sturgis, and the shipment will arrive at Sturgis on January 28th, having consumed two days time in transit. In other words, the rail-truck method will expedite the movement of that shipment by one day.

Q. In other words, the shipment will be moved, and arrive at

its destination one day quicker?

A. Yes, sir.

Q. If it is handled by rail-truck, than it would if it were moved by all-rail?

A. Yes, sir.

Q. And when you refer to all-rail, do you mean, where it would travel the entire distance by rail?

A. Yes, sir.

60 Q. But in this particular instance, or illustration, the shipment would go by rail from New York to Fort Wayne.

Q. And then it would be moved by truck from Fort Wayne to Sturgis, Michigan; is that right?

A. Yes, sir.

Q. Now, then have you set out on this exhibit, illustrations showing the saving in time on shipments covering each and every one of the seven routes?

A. I have.

Q. All right. Now, then, the next shipment shown on this exhibit is from Chicago, Illinois—

Mr. Eccess. Mr. Yockey, I do not think it will be necessary for you to go through the entire exhibit.

Mr. HARRY YOCKEY. All right.

Mr. Eggers. I think, with the explanation which the witness has already given, that the exhibit will speak for itself.

Mr. HARRY YOCKEY. All right, sir.

By Mr. HARRY YOCKEY:

Q. However, Mr. Christie, there is a saving in time, is there not, on each and every one of the shipments that are set forth in the exhibit?

A. Yes.

Q. That is the purpose of the comparison.

A. Yes.

Q. And the saving is from one to two days, is it not?

A. Yes, sir.

Mr. BARKELL. Mr. Yockey, let me interrupt, please, to ask a question right here.

Mr. HARRY YOCKEY. Yes.

By Mr. BARKELL:

Q. Mr. Christie, there is no more saving on a shipment from New York to Sturgis, Michigan, than there is on a shipment from Fort Wayne to Sturgis, is there?

A. Yes.

Q. In other words, all of your saving is taken up between Fort Wayne and Sturgis, on that shipment, is it not?

A. The saving in the time in transit is made in the transfer of the shipment from car to car at the Fort Wayne freight station, and the switching of the cars into and out of the freight station.

Q. Yes, I understand that all right, but I say, all of the saving in your time is made up at Fort Wayne, by the operation of your truck, is it not?

A. (No answer.)

Q. Substituting for the rail service.

A. Yes.

By Mr. HARRY YOCKEY:

Q. Well, now, I want to ask you a further question or two along that line, Mr. Christie. The illustrations that are set forth in this

exhibit: state whether or not they are illustrative of the handling of shipments over all of the seven routes.

2 A. Yes, sir; they are.

Q. And in making up this comparison, where did you

get the figures that are shown in the exhibit?

A. I got the figures from the schedules of The Pennsylvania Railroad, and the proposed schedule of The Willett Company of Indiana.

Q. And by using those schedules, the result is obtained that you have set forth in the exhibit; is that correct?

A. Yes, sir.

Mr. CLARDY. Well, now, let me see if I understand that. Do you mean by that, Mr. Yookey, that the witness has not traced any particular shipment by rail in the past?

Mr. HARRY YOCKEY. Well, supposing we ask the witness to

answer your question.

The WITNESS. I mean, that in the past I have in many instances

traced a particular shipment; yes, sir.

Mr. CLARDY. Well, my question to Mr. Yockey was, are these allrail figures concrete examples of specific movements, or were they just taken from the schedules themselves?

By Mr. HARRY YOCKEY:

Q. In other words, Mr. Christie, did you in making up this exhibit actually go over freight bills and find shipments moving between these points that are set out on the exhibit here?

A. These represent actual shipments, but the dates given are not actual, for the reason that I set all of the dates as on January 26th, in order that I might have a complete week, with-

out a holiday or a Sunday intervening in between, to show the schedule for the week; nor did I have information showing the date of the shipments, on what I worked up this exhibit from.

Mr. CLARDY. Well, I will ask you further about it on cross ex-

amifiation.

Mr. HARRY YOCKEY. Yes.

By Mr. HARRY YOCKEY:

Q. Well, then, Mr. Christie, as the result of this study that you have made, as indicated by the exhibit, will there be a saving on all of these routes of from 24 to 48 hours by this rail-truck method of handling?

A. Yes.

Mr. HARRY YOCKEY. We offer applicant's exhibit No. 6 for identification, in evidence.

Mr. EGGERS. Is there any objection?

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Mr. CLARDY. My objection has been previously stated, and I just want to register it again at this time, without further argument.

Mr. EGGERS. Very well.

Mr. Moberly. And my objection, if the Board please, will be the same as the objection that I urged to Mr. Yockey's question a moment ago.

Mr. Eggers. All right. Do any of the other counsel for protes-

tants desire to join in the objection?

Mr. DES ROCHES, Yes.

Mr. KING. Yes, please.

Mr. EGGERS. Let the record show, Mr. Reporter, that all protestants join in the objection; and that the objection is over-ruled and an exception noted. Applicant's exhibit 6 will be accepted, over the objection of protestants, and considered as read in evidence.

(Exhibit 6, Witness Christie, received in evidence.)

By Mr. HARRY YOCKEY:

Q. Now, Mr. Christie, in the rail-truck service which you have described, on whose freight bills and under whose tariffs does the traffic move?

A. It moves on the freight bills and under the tariffs of The

Pennsylvania Railroad.

Q. Including bills of lading?

A. Yes, sir; of The Pennsylvania Railroad.

Q. Now, then, is that true of all of the busines, that is, The Willett Company business, that is hauled for The Pennsylvania Railroad on the 25 routes now in operation?

A. Yes.

Q. And will the same thing be true regarding the seven routes

that are sought in this particular application?

Mr. CLARDY. To which I object specifically on the grounds already stated. I think that this is even a worse example of permitting the applicant to show here that it will not comply with the rules and regulations of the Commission that apply to common

motor carriers generally, but, on the contrary, that it will do something else. I think that this question very well illustrates the point that I want to make throughout this case, which is that this applicant is being treated in a way that discriminates against common motor carriers generally.

Mr. EGGERS. Let me hear that last question again, please, Mr.

Reporter.

(Question read.)

Mr. HARRY YOCKEY. It goes only to the tariffs, the freight bills, and so forth.

Mr. CLARDY, That may be, but you see my objection.

Mr. HARRY YOCKEY. Oh, I see your objection, all right, but on the other hand, there is a limitation in every one of our certificates that limits us to hauling for The Pennsylvania Railroad; and it is cardinal that this applicant does not haul and does not seek to haul,

anything on its own freight bills.

Mr. CLARDY. Well, I want it very clearly understood, now, so that I will not have to repeat it in connection with this same type of question, that I am objecting to any proof that they intend to operate in a manner other than the statute prescribes; that I regard an operation that does not comply with all of the rules and regulations of the Commission that apply to common motor carriers, as a violation of the statute; and that when you receive proof dealing with an operation that in my judgment this violates the

rules and regulations of the Commission, and the statute, you are discriminating against common motor carriers gen-

, erally, and are treating the railroad as a special case, in violation of the statute. That is why I say I think they erred in all of the other cases that have thus far been tried.

, Mr. EGGERS. All right. Now, just a moment. The objection is

overruled.

Mr. HARRY YOCKEY. Read the question, please.

(Question read.)

A. Yes, sire

By Mr. HARRY YOCKEY:

Q. Now, Mr. Christie, who originates all of the traffic involved, that we are talking about here?

A. The Pennsylvania Railroad or its connections.

Q. Does the applicant originate any of the traffic that is carried on the 25 routes now in operation!

A. No.

Q. Will the applicant originate any of the traffic that is to be carried over the seven new routes by truck?

A. No.

Q. Does the applicant appear as a participating party in the tariffs involved, covering any of the shipments which you have described?

A. No, sir.

Q. Or the ones which are to be transported over the seven new routes requested here?

A. No. sir.

Mr. CLARDY: Now, just so there is no question about it on the record, I assume that our objection—

Mr. HARRY YOCKEY. Is being noted.

Mr. CLARDY. Will continue:

Mr. HARRY YOCKEY. Yes.

Mr. EGGERS. That is correct.

Mr. CLARDY. Thank you. And exceptions are automatically noted, as I understand it.

Mr. Eggers, Yes.

Mr. CLARDY. Very well.

By Mr. HATRY YOCKEY:

Q. Mr. Christie, are you acquainted with the order issued by the Interstate Commerce Commission in Ex Parte 129, under date of July 25th, 1939!

A. Yes. .

Q. And has The Pennsylvania Railroad become a party to a certain Freight Service Directory, in conformity with the suggestion of the Interstate Commerce Commission in Ex Parte 129!

A. Yes, sir.

Q. In this directory have there been listed all of the cities and towns included within the 25 routes that are now in operation!

A. Yes.

Q. And does this directory contain a description of the service that is being rendered by The Pennsylvania Railroad over those particular routes?

68 A. It does.

Q. What is the name of that directory !

A. National Substituted Freight Service Directory, No. 1-A.

L. E. Kipp, Agent.

Q. In this directory is The Willett Company of Indiana listed as performing service over all of the routes now in operation for The Pennsylvania Railroad?

A. Yes.

Q. Is The Pennsylvania Railroad now offering to the shipping public this freight service by The Willett Company, through the use of motor carrier service, over each and all of the routes now in operation?

A. Yes, sir.

Q. And is it the intention of the railroad company to list the seven routes, and the cities and towns on the seven routes, and also The Willett Company as a carrier to haul for the railroad,

if this particular application is granted?

Mr. CLARDY. Now, to which I object, specifically, on the grounds already stated, and on the additional ground that the substituted freight service schedule that they are referring to has been in the past offered, and undoubtedly will be offered again in this case, as a complete substitute for the tariffs ordinarily and normally required of other common motor carriers; and it is therefore objectionable to receive any testimony dealing with that, because it goes to prove a violation of law, and

69 not to support public convenience and necessity in any way.
I do not care whether the Commission has permitted it to be filed or not. It is, in my judgment, a flagrant violation of law, and a rank discrimination against common motor carriers generally.

Mr. Eccers. Will you let me hear that last question again, please,

Mr. Reporter. . .

(Question read.)

Mr. CLARDY. Do your Honors understand the purport of what

he is trying to get at in that question?

Mr. HARRY YOCKEY. If you do not, if there is any doubt in your minds; may it please the Board, I ould like to answer the speech that has just been made by Mr. Clardy.

Mr. CLARDY. I wish you would just state, Mr. Yockey, what it is that you are trying to get at by that question, because if you do, I think you will get the point of what you are going to say.

Mr. HARRY YOCKEY. Of what you are going to say, or what you

have said?

Mr. CLARDY. Both.

Mr. EGGERS. Go ahead.

Mr. HARRY YOCKEY. I have just asked Mr. Christie, if the Board please, if they had followed Ex Parte 129 in joining, or rather, in entering into Kipp's Substituted Freight Directory, and he said that they had over all of the 25 routes now in operation,

that they have listed all of the cities and towns to be served, and they have named The Willett Company therein. Now, that is established. Mr. Clardy, of course, has the right to object to it, in order to lay a foundation, as he says, for a lawsuit that he is intending to bring later, and of course, we have no objection in the world to his doing that. Now, this is only one question that I have asked. I have asked the other questions, and those questions are already in, and there is only one question pending now, which is the necessary corollary to what we have developed; and that is, "Now, are you going to do the same thing here?" The witness answered, "Yes, we are going to do the same thing," and that is all that I want to show.

Mr. Clardy. Of course, that is all he wants to show. Now, I did not object to the other questions, dealing with something in the past, that is not material to any issue here; but when he attempts to get into this record, now, the statement that in lieu and instead of filing the tariff, that is required of every other carrier in the United States, except those that are owned by the railroads, they are going to submit this Substituted Schedule, or Substituted Freight Directory, if he is going to be permitted to testify about this Substituted Freight Directory, then I contend that my interests immediately arise, because it indicates that instead of being

required to file a normal and ordinary tariff, they are going to attempt to tell you that they are going to file something else.

Now, it is true that in Ex Parte 129 the ruling was made—
Mr. HARRY YOCKEY. If the Board please, why should we waste time going into that question?

Exam. HARRISON. Just a moment.

Mr. HARRY YOCKEY. It seems to me that we are consuming a good deal of time unnecessarily here.

Mr. Eggers, Let Mr. Clardy finish.

Mr. CLARDY. Let me say, to shorten it ,that I just wanted to raise the question now, once and for all, and I say again, the thing that we are concerned with here and now is as to whether or not proof dealing with something that is a violation of the statute, should be received in evidence in this case; and I say that it should not be.

Mr. Eggers. All right. Now, just a moment. The objection is overruled, and an exception noted.

Mr. CLARDY. Thank you.

By Mr. HARRY YOCKEY:

Q. Will you answer the question, please.

A. It will be,

Q. What is the answer?

A. It will be.

Q. Now, Mr. Christie, by the service which was described by you in the movement of freight by The Willett Company, do you expedite the movement of Pennsylvania Railroad freight over the movement formerly made by all-rail?

A. Well-

72 Mr. CLARDY. Now, just a moment. To which I object.
Mr. HARRY YOCKEY. That is exactly the same objection
over again, if the Board please. Why go into it again?

Mr. CLARDY. No, this is not the same objection. This is a dif-

ferent one.

Mr. EGGERS. All right.

Mr. CLARDY. I am objecting now to any further reference to what they are doing on their present truck routes, on the ground that it has nothing to do with this operation. The fact that I may have sat silent when he was laying the foundation, does not change the fact that all of these questions dealing with that matter are clearly neither competent nor material.

Mr. Cowan. And the further objection, if the Board please, that the question calls for the conclusion of the witness. I think that

the facts are what the Commission is interested in here.

Mr. Eggers. The objection will be sustained.

Mr. HARRY YOCKEY. Well, now, if your Honor please, will you withhold your ruling for just a moment, until I have had an opportunity to say something.

Mr. Eggers. You may make your statement for the record, Mr Yockev.

Mr. HARRY YOCKEY. No, your Honor; but you have already made a ruling on the objection, and the record shows your ruling.

Now, as I understand it, since you have made your ruling on the record, that precludes me from making an offer of proof. I would like to have the opportunity to make my offer of proof.

Mr. Eggers. You may make your offer.

Mr. HARRY YOCKEY, But I cannot do that, your Honor, with a ruling standing on the record against me; and that is why I asked that you withhold your ruling until I had that opportunity.

Mr. CLARDY. The objection must have been sustained, before

you are in a position to properly make your offer.

Mr. Moberly. Certainly.

Mr. Harry Yockey. You are incorrect, but not to take time unnecessarily, may the ruling be withheld until I can make my offer?

Mr. Clardy, You cannot very well make an offer, Mr. Yockey, until there has been a ruling against you.

Mr. HARRY YOCKEY. You are incorrect. The offer of proof must

be made before the ruling.

Exam. Harrison. Mr. Yockey, the question here is as to the need for this service from Fort Wayne, Indiana, up north into Michigan, and I think myself that we have been spending too much time here on what your present operations are.

Mr. HARRY YOCKEY. Well, it is really showing one complete operation, your Honor, as to what it is, or in other words, what we have done, and what we propose to do. Do you see what I mean?

Mr. Clarry. Furthermore, the fact that the witness has stated his conclusion that it would be expedited at one point,

does not have anything to do with what might happen somewhere else. I am going to further object to counsel leading his witness any further. I have not objected up to this point, because I think counsel's examination has been very helpful.

Mr. HARRY YOCKEY. I suggested sometime ago that if there was

no objection, I would do that, to conserve time.

Mr. CLARDY. That is all right.

Mr. HARRY YOCKEY. I was simply doing it in the interests of time.

Mr. CLARDY. That is true. I am not accusing you of doing it improperly, because we did agree.

Mr. HARRY YOCKEY. Yes.

Mr. Eggers. To save time, the record may show that the ruling is held in abeyance, Mr. Yockey, and you may make your offer of proof.

Mr. HARRY YOCKEY. Well, if the Board please, might we suspend at this time? It is practically 12 o'clock. I have tried to

save time here; I have gotten the testimony in as rapidly as possible. Now, I would very much like to have an opportunity to go through it during the noon hour, and eliminate that particular element in line with your ruling.

Mr. Eggers. Very well.

Mr. HARRY YOCKEY. If that is agreeable.

Mr. CLARDY. Oh, yes.

Mr. HARRY YOCKEY, I think that might save time.

75 Mr. ANDERSON. We never bject to that.

Mr. Eggers. If we suspend now, gentlemen, can we all be back by 1:15? If that is agreeable, come back at that time.

(At 12 o'clock noon, recess until 1:15 p. m.)

AFTERNOON SESSION

The hearing was resumed pursuant to recess, at 1:15 p. m.

Mr. Ecours. Come to order, please.

Mr. HARRY YOCKEY. Mr. Christie.

E. M. Christie resumed:

Mr. Eggens. I take it you still have further direct examination of this witness, Mr. Yockey.

Mr. HARRY YOCKEY. Oh, yes.

Mr. EGGERS. Go ahead.

Mr. Harry Yockey. Now. Mr. Reporter, may I have the last question read, and also the ruling, if I may, so that I will have the state of the record clearly in mind.

(The record was read.)

Mr. HARRY YOCKEY. I take it, your Honor, that the ruling is based on the fact that it applies to the present, rather than the future.

Mr. Eccent Yes.

Mr. HARRY YOCKEY. Is that correct?

Mr. EGGERS. Yes.

78 Mr. CLARDY. How is that?

Mr. HARRY YOCKEY. I say the ruling is that masmuch as the question applies to present operations, it is objectionable.

Mr. EGGERS. That was the substance of it.

Mr. HARRY YOCKEY. All right.

Direct examination (cont'd) by Mr. HARRY YOCKEY:

Q. Now, Mr. Christie, you have already testified that the freight, if it is turned over to The Willett Company on the new routes, will be expedited from 24 to 48 hours.

A. Yes.

Q. Now, will you tell us in what manner that expedition will be performed, or brought about.

A. We will expedite the movement of the freight by the use of the rail-truck service, by eliminating the switching of the cars

into and out of the freight house, and the transfer of this freight from car to car at the transfer station. We will eliminate the switching of cars from the house. In some instances it is necessary for us to hold a peddler car over from one day to the next in the freight station, for the reason that the local freight operates on a tri-weekly basis. In such instances as that, the freight is expedited 48 hours.

Q. Well, now then, would you mind describing how the freight goes into the station. Take, for instance, from Fort Wayne,

Indiana, to Kalamazoo, Michigan; take a shipment, for instance, that will go over one of these routes from Fort Wayne to Kalamazoo, and along the lines of what you have just described, begin at the freight house, and tell us how you will expedite it there, and then tell us how the freight-train movement is involved.

A. Well, there may be a freight train from the east arriving at Fort Wayne with 100 cars in the train, say. Possibly 10 or 15 of those cars are merchandise cars.

Q. What do you mean by that?

A. Cars containing less than carload freight.

Q. All right.

A. Those cars naturally would have to be switched into the freight station at Fort Wayne. The other 85 or 90 cars of the train would be for destinations beyond Fort Wayne, or for industries in Fort Wayne, or connecting lines. When this train arrives in the yard, it is switched, or as we term it, broken up by a yard engine, that puts the cars over the hump, and switches them on separate tracks, according to where the cars are going. The merchandise cars for the Fort Wayne house would be switched on one track, and after the switching has been completed, a yard engine would move them from the yard to the Fort Wayne freight station, and place them at certain spots in the freight station, according to the place where the agent designates that they should go. This switching generally occurs during the night, and the freight station is set up for operation as early as possible the next morning. When the freight station crews afrive

the next morning. When the freight station crews arrive for work, they are designated by gangs. A gang generally consists of five men. These men unload the cars. The freight for the trucks will go to the truck platform. The freight for delivery in the city will go to the proper spot on the platform. The freight to be transferred from car to car, will be transferred by these men. Now, after the freight has been unloaded from the car on the platform for the truck, it is loaded onto the truck immediately, and the truck departs the same day that the cars arrive in the freight station, and makes delivery of the freight the same day that it arrives at Fort Wayne. Whereas, if it is transferred

from car to car, that car is in the freight station all day, and at night it is closed and sealed, and pulled to a particular point; and the operation of again switching the car from the house yard by the yard engine and the classifying of the car on a certain track for a certain train consumes a few hours' time. The cars are forwarded out that night; whereas, by truck the freight leaves the same morning that it arrives in the freight station.

Q. In other words, then, Mr. Christie, taking the example of a shipment from New York, N. Y., to Sturgis, Michigan, which is set forth in applicant's exhibit No. 6: that particular shipment would come in on a freight train, that is, if it were moving via

all-rail, it would come in on a freight train, in a certain car, and that car would be switched out of that train at Fort Wayne into the Fort Wayne yard. Is that correct!

A. Yes.

Q. And then into the freight house.

A. Yes.

Q. And during a 24-hour period, that freight would be taken out of that particular boxcar and put into another boxcar which was spotted there for deliveries north out of Fort Wayne, to points north, including Sturgis. Is that right.

A. Yes.

Q. And the freight would be carried, then, by the local freight train that leaves Fort Wayne, going to Sturgis, Michigan?

A. Yes.

Q. So that during that period, 24 hours' time is consumed by the rail method; is that correct?

A. Yes, sir.

Q. In transferring that freight from the train that it came from New York in, to the train that goes from Fort Wayne to Sturgis?

A. Yes, sir.

Q. Now, then; by this rail-truck method, you will save 24 hours' time there; is that correct?

A. Yes, sir; that is correct, for the reason that the shipments are unloaded directly out of the car to the truck, and the truck departs from Fort Wayne within a few hours after the freight has arrived there.

Q. So that you would save 24 hours at that point?
A. Yes.

Mr. Moberty. If the Board please, I assume that my previous objection is understood to continue to all of this line of testimony relative to shipments from states other than Indiana and Illinois:

Mr. EGGERS. Yes.

Mr. Moberty. And the objection is overruled, and an exception noted.

Mr. Eggers. It will be so ordered.

Mr. MOBERLY. Thank you.

Mr. CLARDY. The record also shows that I have a continuing objection to all of this line of examination.

By Mr. BARKEM.:

Q. Is it possible, Mr. Witness, that you could give better rail service than that?

A. Well, I would say that anything is possible. In other words, we could run a train out with only one car in it. But it certainly would not be a profitable operation to do anything like that.

Q. Well, I was thinking more about the physical operation in connection with this handling that you have describedhere. Except for the switching of these cars around at Fort Wayne, the same physical operation is involved, is it not?

A. No, sir. It would not be practicable to do that.

Q. Why not?

A. For the reason that we set up the Fort Wayne house, and we have got approximately 100 cars in the house. Now, if you go to pull that house before the entire work is completed, then you have caused them to take out their door plates, close the cars, and discontinue using that track, and you have delayed the operation of the freight station, and you would have an expensive operation for special run switching there; so it would not be practicable to do that kind of job.

Q. In other words, it takes 24 hours longer to perform that operation, than it would to unload from the car/to the truck?

A. It is generally conceded that any transfer into a freight station of that size, requires 24 hours; yes, sir.

By Mr. HARRY YOCKEY:

Q/And is that true of all points of that type-

A. Yes.

Q. All over the Pennsylvania Railroad?

A. Yes, sir.

Q. And other railroads as well!

A. Yes, sir.

Mr. Clardy. Well, now, just a moment, please. Let us not have the witness endeavor to speak for other railroads. He cannot speak for any railroad except ThePennsylvania Railroad.

Mr. HARRY YOCKEY. If he knows.

The Witness. I will say, on the Pennsylvania Railroad, Mr. Eggers: Yes; we will strike from the testimony of this witness any reference pertaining to other railroads.

Mr. HARRY YOCKEY. All right.

Mr. CLARDY. The service on the other railroads may be just as bad, but you ought to bring in somebody else to testify about it.

By Mr. HARRY YOCKEY:

Q. Well, now then, Mr. Christie, where are the instances in which you expedite the movement of the freight 48 hours, that you have testified about?

A. There are instances where the local freight train operates on a triweekly basis. In other words, it will operate in one direction three days a week, and then it will operate in the reverse direction three days a week. In such instances as that, the crew at the present time operates every other day; while under this proposed rail-truck operation, the truck would operate every day, and thereby expedite the movement of the freight 48 hours.

Mr. Clardy. Mr. Yockey, I am not quite sure whether I caught your question correctly or not. But are you not assuming, and is the witness not assuming in all of this testimony, that all of the freight into the Fort Wayne house, which you have used as an illustration, would arrive during the night sometime, and before the scheduled time that you have set up for the departure of the truck?

By Mr. HARRY YOCKEY:

Q. Is that right?

A. No, sir; not all of them—not all of the trains would arrive at that time, but the majority of them would, I would say.

By Mr. CLARDY:

Q. Well, Witness, the only reason I asked that question was, with your scheduled time of departure at 9 o'clock out of Fort Wayne, if the train that brought the freight in got in after the 9 o'clock departure time, the movement of the freight would not be expedited, would it?

A. That train, that particular train that I had reference to there, is due at Fort Wayne at 12:30 a.m., and the cars are placed at the freight house at 4 o'clock a.m.

Q. But anything that arrived there after 8 or 9 o'clock in the morning, at the present time, would not get out on the same day it arrived there, would it?

A. That is true.

Mr. HARRY YOCKEY. Or anything that arrived there on through until—I take it you mean by truck, do you not?

Mr. CLARDY, Yes.

Mr. HARRY YOCKEY. That is right.

By Mr. HARRY YOCKEY:

• Q. Well, now then, Mr. Christie, is there any other manner of operation, or place, or condition, under which there is a saving of 48 hours?

A. Yes:

Q. Where is that?

A. There are times when there is not sufficient tomage to justify forwarding the car, and it is set back in the freight house until the following day, held over until the second day for forwarding. However, in this case, this proposed operation, it would be forwarded on the truck daily, so that we would expedite the movement of freight there 48 hours, also.

Q. Now, are there any other conditions that I have not asked you about, under which there would be an expedition in time from

24 to 48 hours?

A. Well there is the condition of where a shipment is picked up by a Willett Company truck and taken to the transfer station, and is also delivered by a Willett Company truck on the delivery end, where we advance the delivery time of the shipmen. 48 hours.

Q. In other words, shipments that would originate at an intermediate point close to Fort Wayne, if that shipment were destined for delivery in Kalamazoo, Michigan, let us say, that shipment

would go by truck, would it?

A. No.

Q. Into Fort Wayne?

A. No sir; that would not be an example.

Q. All right. Then you give us an example.

A. That shipment would get 24 hours advance movement; but take the example of a shipment from Columbia City, Indiana, say, for instance, going to a point north of Grand Rapids. We would pick that up by truck at Columbia City, take it into Fort Wayne, and load it into a car the same day, and it would be in Grand

Rapids the following day, and move on the truck to destination; and in that manner we would expedite the movement of that shipment 48 hours, because we would save 24 hours

at Fort Wayne, and 24 hours also at Grand Rapids.

Q. The manner of handling freight in the freight house, which you have described at Fort Wayne, is also true at Grand Rapids; is it?

A. Yes, sir.

By Mr. EGGERS:

Q. Is it true at any other point on this proposed route?

A. Yes, sir—well, we do not have any other large freight station on the proposed route.

Q. In other words, then, Grand Rapids and Fort Wayne-

A. Right.

Q. Are the only two points?

A. They are the only two large stations that we have on the route, that we classify as transfer stations, where a number of cars are handled.

Q. There would not be any particular delay, then, at any of

the other points on the proposed route, would there?

A. Oh, yes, sir; there would; there would be a delay in getting the cars in and out. For example, taking Cadillac: say we have a car from Cadillac to Fort Wayne. By this method here, we would truck the freight to Cadillac, and put it directly into the car, and

get it to Fort Wayne the next morning; whereas, if we had to do it by all-rail, it would stay there until the next day.

Q. Where?

A. At Cadillac.

Q. At Cadillac?

A. Yes, sir. While Cadillac is a small station, and does not handle a large amount of business, we would save the same amount of time there, because, from the time the cars arrive in the yard, and are placed in the freight house, it is next day before they are switched.

Q. But as far as Cadillac is concerned, Mr. Christie, is that not due to the fact that you do not have enough freight to move an entire car out of Cadillac? Is that not the reason?

A. We will have enough freight to move the entire car under

this proposed plan; yes, sir.

Q. No: I mean, under your present setup, under your present system of operation?

A. That is right.

Q. You do not have?

A. We do not have enough freight to make a car at Fort Wayne; that is correct.

Q. So trat you are compelled to hold it, then, for another 25 hours?

A. We hold the car at Cadillac until we have sufficient tonnage; and then when the car departs, it goes as a way car to Grand

Rapids. It is on the way the next day, on the local train, and

87 then it goes into the Grand Rapids freight station.

Q. Would your answers be substantially the same with respect to every other point on the route—

A. Yes.

Q. Through Grand Rapids and Fort Wayne?

A. Yes.

Mr. EGGERS. All right.

By Mr. HARRY YOCKEY:

Q. Now, Mr. Christie, regarding all-rail shipments for delivery by truck north of Fort Wayne: It is a fact, then, is it not, that on all shipments coming over the railroad to Fort-Wayne, that originate at points other than Fort Wayne, there will be an expedition of 48 hours, by reason of the fact that on the rail shipments that come by rail into Fort Wayne from some other point, you lose 24 hours there, and then when those shipments go by rail to Grand Rapids, there is also 24 hours lost there, so that they go forward with an additional 24 hours lost. Is that correct?

A. Yes, sir, that is correct. There would be a 48 hour delay, when a shipment goes through Fort Wayne and Grand Rapids, where it is handled in the manner that we have described.

Mr. CLARDY. Now, just a moment.

Mr. Eggers. Did you have something, Mr. Clardy?

Mr. CLARDY. Yes, your Hoor. I am objecting to this, now, after it has been answered, because I do not believe the statement made by counsel is correct, and the evasive answer just given by the witness proves it. May both the question and the answer be read by the Reporter, your Honor. I do not think the witness has answered the question.

(Question read.)

Mr. Eggers. I think that question has been answered, Mr. Clardy.

Mr. CLARDY. Well, may we hear the answer.

(Answer read.)

Mr. HARRY YOCKEY. To save time, let me clarify it.

Mr. CLARDY. The reason I say, I think it is an incorrect statement, is this—

Mr. HARRY YOCKEY. Let me ask him another question.

Mr. Clardy. If your opening statement means anything, it is going to move by rail, under the condition that you have named, all the way to Grand Rapids, and hit the truck for the first time at Grand Rapids,—or else your key-point illustration does not mean anything.

Mr. EGGERS. I believe that is correct, Mr. Yockey. I think you

had better clarify that.

Mr. HARRY YOCKEY. Yes. Mr. CLARDY. I think so.

By Mr. HARRY YOCKEY:

Q. Now, Mr. Christie, is it true that in all of the instances that I have enumerated there will be a 48-hour loss, or will some of that loss be less?

A. Well, now, I do not just know myself where we stand here, and I would like to make plain what I had in mind, in answering that question.

Q. Yes.

According to the way I understood the question. The question was to the effect that if these shipments traveled by all-rail

Q. Right.

. A. There would be a 48-hour delay.

Q. Yes.

A. Now my answer to that question is: Yes; that is, as compared with the all-rail method, if the shipments are handled by truck to Fort Wayne, and then by rail to Grand Rapids, and then trucked out in the manner that I have just described, there will be a 48-hour saving.

Q. Yes. However, though, Mr. Christie, there are some-

Mr. Eggers. Well, now, just a moment, Mr. Yockey. I do not just follow that.

Mr. CLARDY. I do not follow it either, but I will go into it fur-

ther on cross-examination.

Mr. BARKELL. I do not follow it, either.

Mr. HARRY YOCKEY. Let me try to clarify it further, your Honor.

By Mr. HARRY YOCKEY:

Q. There are some instances, though, are there not, Mr. Christie, where there will only be a 24-hour saving?

A. Yes.

Q. And they will be where a car comes through from some other point that is classified for delivery at Grand Rapids, that will go through Fort Wayne without the loss of any time, if it is a full car; is that correct!

A. I do not quite understand that question, now.

Q. Well, as I understand it then, let me put it this way: Are there any instances where there will be only a 24-hour saving in time, by the proposed method?

A. I have given many instances of where there will be only a

24-hour saving.

Q. Well, I mean, specifically, on a movement through Fort-

Wayne and Grand Rapids

A. Ch, yes. That shipment would come into Fort Wayne in a car, and then it would be transferred the same day to Grand Rapids in a car, and then by truck, there will be a 24-hour saving.

Q. In the same car, at Fort Wayne?

A Pardon me!

Q. In the same car, put of Fort Wayne?

A. Well, the same car, or another car.

Mr. HARRY YOCKEY. Does that clarify it now, if your Honor please?

Mr. CLARDY. I think it is at least substantially in line with your opening statement.

Mr. HARRY YOCKEY. All right.

Mr. CLARDY. If I correctly understand the way you are going to operate.

Mr. EGGERS. You can go further into the matter in detail, of course, on cross-examination.

Mr. HARRY YOCKEY. Yes.

Mr. CLARDY. Oh, yes, your Honor, I am going to have quite a few matters to develop from this witness on cross-examination.

Mr. EGGERS. Proceed.

By Mr. HARRY YOCKEY:

Q. Now, then, Mr. Christie, in the movement as you have described it here, is there any reduction in operating expense to the Pennsylvania Railroad, under the all-rail movement, by reason of the rail-track movement—or will there be any such reduction, rather, over these particular routes?

Mr. CLARDY. To which we object. Did you hear the question,

your Honor?

Mr. EGGERS. Read it, please.

(Question read.)

Mr. Clarry. Your Honor, all of the reasons which I have advanced up until now, in my other objections, apply here, plus the fact that, if there is a saving to the railroad company, it has no bearing on the issue of public convenience and necessity in this proceeding. If there is such a saving, it is as I say, a saving to the railroad company, and certainly would not be any substantial

reason why the public should have another carrier inflicted upon it over these particular highways. If that is any ground for showing public convenience and necessity, then all you have to do is to show any ridiculous think that you can think of. I cannot by any stretch of the imagination see how a saving to a carrier can be translated into any convenience or necessity to the public. The situation, so far as the public is concerned.

is going to remain the same.

Mr. HARRY YOCKEY. Now, if the Board please, I would just like to make this observation, that the mere fact that Mr. Clardy cannot see something here does not decide the question, at all. In every one of these cases, every one of these rail cases, involving this same type of station-to-station operation, there has developed this very proposition, that it is considered an expedition of the service, an economy and a saving to the railroad. That is in every one of these cases, and we have developed it over opposition in every case that has been tried.

Mr. Eggens. Well, can you advance any reason for it in this

case, Mr. Yockey!

Mr. HARRY YOCKEY. Why, yes.

Mr. EGGERS. We will appreciate, of course, being advised of anything that has been done in the past, but if we are convinced ourselves that the ruling should be one way or the other, why, then we should rule as we see it. Merely because something was done before, I do not think is any good reason why it should be done here again, although of course, we will give consideration to the

opinion of the Commission.

Mr. HARRY YOCKEY. Yes, Mr. Chairman, I shall be glad

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to. In these cases there are several elements, as to why this proposed service is a convenience and necessity to the public. First—and we have gone into that here—is the matter of the time element, the expedition of the movement of freight.

Mr. Eccers. And we have permitted the evidence as to that to

go in.

Mr. HARRY Yockey. Yes. Then the witness has told you that there is a saving involved to the railroad. The railroad itself is an essential element in this case. The railroad is able, by these economies concerning which the witness will testify, that this service does effect, to perform a more economical operation. Now, that is considered to be one of the cardinal reasons in this case, and as I said, in every one of them.

Mr. BARKELL Will you answer this question directly, Mr. Yockey, as to what a saving to the railroad has to do with con-

venience and necessity to the public?

Mr. HARRY YOCKEY. Well, it has something to do with it because the Commission has so ruled in every one of the cases.

Mr. BARKELL. Well, can you tell us, in the particular case that

we are considering right now?

Mr. HARRY YOCKEY. Why, it is a condition in every case. Where you can show economy of operation, it is always a vital part of the case, a vital question in the case, in connection with public convenience and necessity.

Mr. BARKELL. If it is reflected back to the public, it may

be; ves.

Mr. Anderson. It may be an economy of operation to the railroad, your Honors, but the railroad is not the applicant here.

Mr. HARRY YOCKEY. The Commission has decided in these cases

that ultimately the public benefits by economy of operation.

Mr. EGGERS. I think that Mr. Anderson has something there also, in the point that he just mentioned. It might be a saving to the railroad company, but the railroad is not the applicant in this case.

Mr. Anderson. Right.

Mr. HARRY YOCKEY. But it is in every one of these other cases, your Honor.

Mr. Anderson. That may be.

Mr. HARRY YOCKEY. We have it in every one of the cases.

Mr. EGGERS. The objection is sustained.

Mr. HARRY YOCKEY. Now on this matter, if the Board please, as on the other one, may I ask you to withdraw your ruling, so that I may make an offer to prove; and then let the record show your ruling afterward. The rules of evidence require that an offer to prove must be made, and then the ruling made. That is the procedure that ought to be followed. Of course, it is an

95 impractical rule, but nevertheless, that is the rule of evidence, and unless the record is made that way, it will not be of any value to us.

Mr. Eggers. Off the record.

(Discussion outside the record.)

Mr. EGGERS. Back on the record. The Joint Board will withdraw its ruling temporarily, in order to give Mr. Harry Yockey counsel for applicant, opportunity to make an offer of proof.

Mr. HARRY YOCKEY. Thank you.

Mr. CLARDY. Well, we will, of course, register our objection to the offer.

Mr. HARRY YOCKEY. Oh, yes.

Mr. CLARDY. When he is finished with it.

Mr. HARRY YOCKEY. If the Joint Board please, may I have just a few minutes here to get things in shape, please.

Mr. Eggers. All right. We will suspend for a short time.

(A short recess was taken.)

Mr. EGGERS. Come to order, please, gentlemen. Are you ready

to proceed, Mr. Yockey?

Mr. HARRY YOCKEY, I would like to have the privilege now, if your Honors please, of not pursuing this particular bit of evidence with Mr. Christie any further at this time, but after his examination in chief has been completed, and his cross-examination, I would like to have the privilege of putting him back on the witness stand to ask him further questions along this line.

Mr. Eggers. Granted.

Mr. HARRY YOCKEY. Thank you.

Mr. Clardy. Well, I will say right now, your Honors, that I do not want to cross-examine the witness until counsel for the applicant has finished all of his direct examination.

By Mr. HARRY YOCKEY:

Q. Now, Mr. Christie, by eliminating these less than carload cars from the local freight trains of the Pennsylvania Railroad, do you in any manner improve the service to your carload patrons?

A. Yes, we do.

Q. State how.

A. For the reason that it is a hard matter to make a schedule for local freight trains that will best serve the convenience of the carload shippers, and the less than carload shippers as well; and by eliminating the way car from the local peddler freight trains, it leaves us free to schedule those local freight trains at a time that will best serve the conveniences of the carload patrons.

Q. Well, now, Mr. Christie, does the service—or will the service that you have just described here, that will be put in, if the authority is granted, over the seven new routes, coordinate with and

supplement the service of the Pennsylvania Railroad?

Mr. CLARDY. To which I object on the ground that it calls for a conclusion on the part of the witness, and furthermore, I do not know if I myself understand what it means.

Mr. HARRY YOCKEY. Well every one of the decisions goes into the question of supplementing the service, that the service must be a supplementary service to the rail service, so that the whole thing is a question of supplementing the rail service.

Mr. Anderson. I object to the question on the further ground, if the Board please, that it is not a question of supplemented service in this case. We will concede that it was in the other cases, where there was the "prior and subsequent rail haul" provision, but in this particular application they do not have that, and therefore there is no supplementation of Pennsylvania Railroad service whatsoever.

Mr. HARRY YOCKEY. Well, of course, your Honors, that is merely Mr. Anderson's opinion of it.

Mr. Anderson. Just a moment.

Mr. HARRY YOCKEY. We say that that there is.

Mr. Anderson. Let me finish.

Mr. HARRY YOCKEY. Mr. Christie will testify that there is.

Mr. Anderson. You say that there is, wholly on the ground of the fact that it will move on a Pennsylvania Railroad freight bill, and the solicitors of the Pennsylvania Railroad will do the soliciting; but, as a matter of fact, it is not supplementing it at all. It

is simply a matter of their going out and getting all of the freight they can, from every possible quarter that they can

get it from; and for that reason the ruling in another case, that may have been similar to this, would not apply in this case at all.

Mr. Eccess. Now just a moment, gentlemen. May I hear that last question, please, Mr. Reporter?

(Question read.)

Mr. Eccens. The objection is overruled, and an exception noted.

By Mr. HARRY YOCKEY:

Q. The Board has ruled that you may answer the question, Mr. Christie.

A. Would you mind giving me the question again?

(Question again read.)

A. Yes, sir, it will coordinate the service of the Pennsylvania Railroad and the service of The Willett Company and bring them into closer relationship; and it will supplement the service of the Pennsylvania Railroad by the use of the motor truck.

Mr. Cowan. I move, if the Board please, that the answer with respect to coordination, and supplementing the service of the Pennsylvania Railroad, be stricken from the record.

Mr. HARRY YOCKEY. What part of it?

Mr. Cowan. The witness is talking about coordination, and closer relationship, between The Willett Company and the Pennsylvania Railroad, which does not have any bearing at all on his answer to your question.

Mr. HARRY YOCKEY. Why, that is coordination, Mr.

Cowan.

99 Mr. Eccres, Just a moment, gentlemen. Will vou let me hear the answer, please, Mr. Reporter.

(Answer read.)

Mr. HARRY YOCKEY. He has answered the question.

Mr. Cowan. I submit that his reference to closer relationship, should be stricken from the record, because, of course, the more they have in common, the closer the relationship; and that was not in the question.

Mr. Eggers. The motion is denied.

Mr. Clardy. I want to move to strike out the answer on a different ground—as having no relationship whatever to public convenience and necessity. The facts, as set out in the answer, of course, are broader than the question themselves, but you have ruled on that: Now I move to strike out the entire answer, as not having any relationship whatever to public convenience and necessity.

Mr. Eggens. Well, we have ruled on that, Mr. Clardy.

Mr. HARRY YOCKEY. Yes.

Mr. EGGERS. The objection was on the same ground.

Mr. CLARDY. I did not so understand it, your Honor. If it

was, however, very well.

Mr. EGGERS. That is, the wording might not have been identical, but we have allowed the question to stand for whatever value it may have.

Mr. CLARDY. All right.

100 By Mr. HARRY YOCKEY:

Q. Mr. Christie, is the Pennsylvania Railroad willing to employ a nonsubsidiary truck line, or truck lines, to perform this station-to-station service described by you over the seven new routes?

A. No, sir. -

Q. Why not?

A. Well-

Mr. CLARDY. Now, just a moment. I object to the witness reciting any reason why. I do not think it is competent. As long as he has said he will not, beyond that the Commission has no interest, and we certainly have no interest, and I do not think it proves anything.

Mr. HARRY YOCKEY. Well, that is the same objection that coun-

sel made just a little while ago here.

Mr. Eccess. Will you let me hear the last two questions and answers again, please, Mr. Reporter.

(The record was read.).

Mr. Eggers. And what was Mr. Clardy's objection, please?

(The objection was read.)

Mr. CLARDY. My point is this, your Honor, that the witness has just testified that they will not use the service of any other truck line. Now, how can it possibly prove public convenience and necessity to develop the reason or reasons why they will not? The witness has made the statement here that they will not?

not do it, the flat statement that they will not do it. He

101 has already testified that they are going to do business
with their own child, or none at all. Now, beyond that,
why should we permit him to go afield, and bring in matters that
cannot possibly have any connection with public convenience and
necessity?

Mr. HARRY YOCKEY. If the Board please

Mr. CLARDY. The stubborn attitude should not be gone into, any further than that.

Mr. HARRY YOCKEY. May I be heard?

Mr. EGGERS. Yes.

Mr. Harry Yockey. If you want to be stubborn, Mr. Clardy, I have no objection in the world to your being stubborn, but I am not stubborn. I have asked a question of the witness here, to which he has answered "No." Now, in view of that answer, I submit that I have a right to inquire of the witness, "Why not?" and have him give the reason or the reasons why the Pennsylvania Railroad will not do that.

Mr. Eccess. The question is this: Can you connect that up with public convenience and necessity?

Mr. HARRY YOCKEY. Why, certainly, your Honor. It is a part of public convenience and necessity.

Mr. Eccess. In what way?

Mr. CLARDY. How?

Mr. HARRY YOCKEY. By reason of the fact that it shows why. Now these men here are all here because they want us to employ them. That is the reason they are here.

Mr. EGGERS. Perhaps they can testify to that, then.

Mr. HARRY YOCKEY. But they cannot testify as to why we want a subsidiary, and not an independent truck line. That is the question here—why do we want a subsidiary truck line, like The Willett Company, a subsidiary company, rather than an independent truck line!

Mr. Eccers: I think the question should rather be: Does the

public convenience and necessity require it?

Mr. HARRY YOCKEY. Well, your Honor, all of these questions go to public convenience and necessity.

Mr. Moneray. Oh, no. Your question goes only to the convenience of the Pennsylvania Railroad.

Mr. HARRY YOCKEY. Well, everything that is a convenience to

the Pennsylvania Railroad, serves the public.

Mr. MOBERLY. You will have to prove that,

Mr. HARRY YOCKEY. That is the case, very definitely.

Mr. MOBERLY. Oh, no.

Mr. HARRY YOCKEY. It is the same thing, your Honor, that we have gone into in every case.

Mr. Eggers. Just a moment, now, gentlemen; just a moment.

Mr. HARRY YOCKEY. Before you rule, your Honor, if the Board is going to rule adversely to me, I would like the opportunity to make an offer of proof.

Mr. EGGERS. Well, I will say to you, Mr. Yockey, that we are

· going to sustain the objection.

Mr. HARRY YOCKEY. Well, before you do that, your Honor, before you make your ruling, will you let the record show that I ask the privilege of making an offer of proof—

Mr. EGGERS. Certainly.

Mr. HARRY YOCKEY. And then, with that on the record, I will defer it until the time Mr. Christie comes back to the stand again.

Mr. EGGERS. I see no objection to that.

Mr. ANDERSON. That is agreeable.

Mr. Eggers. With the understanding that you will be permitted to make your offer of proof, and then we will overrule it.

Mr. HARRY YOCKEY. I think we can save time; if I am not compelled to make the offer right now.

Mr. EGGERS. That is all right.

Mr. HARRY YOCKEY. I am not ready to do it right now, so we will save time by doing it when Mr. Christie comes back.

Mr. Eccess. All right. The same understanding will apply, then.

Mr. HARRY YOCKEY. Yes.

Mr. EGGERS. That applied before.

Mr. HARRY YOCKEY. Yes.

Mr. Eggers. Off the record.

(Discussion outside the record.)

Mr. EGGERS. Back on the record. Proceed.

By Mr. HARRY YOCKEY:

Q. What is the fact, Mr. Christie, as to whether or not you have made a study, on behalf of the Pennsylvania Railroad, regarding the effect on the movement of freight over the Pennsylvania Railroad, or certain portions of it, caused by the so-called "prior and subsequent movement by rail movement" clause?

Mr. CLARDY. Just a moment. To which I object. Now, that is not in the case, your Honor.

Mr. HARRY YOCKEY. Well, now— Mr. Eggers. Just a moment, gentlemen. Let me hear the question, please, Mr. Reporter.

(Question read.)

Mr. CLARDY. Now, may I state my position?

Mr. HARRY YOCKEY. Yes.

Mr. Eggers. Go ahead.

Mr. CLARDY. I am objecting to the question on two broadgrounds. The first one is that the subject matter dealt with is all of their relations with this trucking company, and not with the present relations specifically-in other words, the question is altogether too broad to start with; and in the second place, it is not material or competent to any issue involved here, because the insertion or the noninsertion of that so-called restriction is not proper in any of these cases as bearing on public convenience and

necessity; and until there is some indication that the Commission is going to impose it, it could not possibly go into

the case unless-and I now come back again to my original thesis-you are going to treat this applicant as a totally different species of carrier, as compared with all the rest of the protestants here, and all the rest of the motor carriers.

Mr. Anderson. I would like to be heard briefly on this matter,

also, if the Board please.

Mr. Eggers. Yes.

Mr. Anderson. Because that, I think, goes to a very important point in this case, as I see it. In this application they have come in here and asked for the authority they are asking for, covering a free and unrestricted movement between Fort Wayne, Indiana, and Mackinaw City, Michigan. They say nothing whatever in their application about prior and subsequent rail movement. They do not say that there is any such thing; and were it not for the previous cases, we would not know, and you would not know that there was any such thing. So it does not apply in this case at all. What they are asking for now, in this case, is one thing; and what they asked for elsewhere, as far as a prior and subsequent movement by rail is concerned, is something else. We have got to try this case on the basis of this case itself, and not on the basis of some other case, where they may have brought in a prior and subsequent movement by rail. The "prior and subsequent movement by rail"

proposition does not have anything whatsoever to do with

this case, because they have not asked for that.

Mr. EGGERS. It might simplify matters a little, Mr.

Yockey, if you would state the purpose of the question.

Mr. HARRY YOCKEY. Certainly, your Honor. That question is only a qualifying question; and before I can ask this witness another question, I have got to qualify him. The question so far has only got down to the matter of whether he has or whether he has not made a certain study. Now, as I say, before I can ask him anything further about that, I have got to qualify him.

Mr. CLARDY. I submit that it makes no difference whether he has

made such a study or not.

Mr. HARRY YOCKEY. Now, just a moment, Mr. Clardy. I did

not interrupt you, when you were talking.

Mr. CLARDY. All right. I did not mean to interrupt you, either. Mr. HARRY YOCKEY. Now, then, this question is pertinent in this particular situation, for this reason: We have had a number of cases of this type, in securing all of our certificates enumerated in the exhibit that we have already introduced here; and in the grand father case, for instance, there was a "prior and subsequent movement by rail" clause inserted. There was no such evidence in the case, but the Commission inserted it, and it did so insert it in there

because of the fact that, in the Kansas City Southern case, it had put that clause in there, and that was the first case in

which the clause was put in. Now, then, the history of this situation is this, that when we came to our other cases, as enumerated here, the interim case, and then Sub No. 1, and Sub No. 2. without any evidence in the case, the Commission inserted the "prior and subsequent movement by rail" clause; and we had no opportunity to present any evidence as to whether we had done that, or whether we had not. The Commission inserted that same clause in probably one hundred cases. There were appeals taken in a large number of those cases to the Commission, and the Commission held, in the Seaboard Air Line case, the Louisville & Nashville case, and other similar cases, within the last year, that the railroad has the right; the Commission held that if the clause went in-and in this case we are substituting the key-point restriction, in place of the "prior and subsequent movement by rail" restriction-they had the right later to come in and ask for its removal, if it proved to be detrimental to them. Now, then, when we come to Sub Nos. 3, 4, and 5, that is, MC-2815, Sub Nos. 3, 4, and 5, we were for the first time confronted, just like we are here, with this same situation in an actual case that was being tried. question came up right after the Seaboard Air Line case, and the Examiner asked us at that time as to what we cared to do regarding the matter, if we would put some evidence into the record with

respect to whether or not we wanted the "prior and subse108 quent movement by rail" clause in there. So we are doing
that in this case. You want evidence as to whether or not
that clause should go in here and instead of letting the case come
to a hearing, and getting an order, and then trying to put a restriction of that sort in there, we want some evidence in this record,

showing that we do not want that clause, and why we do not want it.

Mr. EGGERS. All right.

Mr. HARRY YOCKEY. Rather than letting it go to a later date, and then trying to do something with it.

Mr. Eccess. Now, just a moment, gentlemen. The objection to

the question is overruled.

Mr. Clarry. Now, Mr. Reporter, will you go back and read the question. I think, your Honor, you have overlooked a part of my objection, and that is, that the question is too broad, and that it covers the past as well as the present.

Mr. Eggers. It is only a preliminary question, as I understand

it, and we can restrict it to the situation here.

(Question read.)

Mr. EGGERS. You may answer.

A. I have.

By Mr. HARRY YOCKEY:

Q. And did that include movements of freight by rail-truck operations of the Pennsylvania Railroad and the Willett Company of Indiana—

A. Yes.

Q. Over all of the routes now in operation?

109 A. Yes, sir.

Q. Now, Mr. Christie, have you, in addition to making a study of the old routes, studied the operations of the Pennsylvania Railroad with reference to the seven new routes, as to the effect that rail-truck operation will have, as between the two types of service, as to whether the Pennsylvania Railroad desires this clause inserted in any certificate covering the seven new routes?

A. I have made such a study; yes, sir; and the Pennsylvania Railroad does not want the "prior and subsequent rail haul" re-

striction in this certificate-if any.

Q. The Pennsylvania Railroad does not desire that clause inserted?

A. No.

Q. Well, now, then, will you give your reasons—or, the reason why they do not want that?

Mr. CLARDY. May the record show, your Honor, that my orig-

inal objection is renewed.

Mr. Eccess. Yes: the record will show that you are renewing your objection, and the objection is overruled, and an exception noted.

A. Yes.

By Mr. HARRY YOCKEY:

Q. Go ahead.

A. For the reason that it will cause the Pennsylvania Railroad to handle freight unnecessarily, by loading it into cars, in order

that it may receive a prior movement by rail. There will be an additional expense involved to the Pennsylvania Railroad, by reason of having to load such freight in such cars.

Q. Now, is there any other reason, or rather any other reasons, why the Pennsylvania Railroad does not want that clause in-

serted?

A. Yes, sir, because it will cause additional cars to be loaded; in some instances it will cause The Willett Company to haul freight longer distances than is required; and it will delay the movement of the freight to the patrons of the railroad.

Q. Well, now, then, how will such a restriction be detrimental—well, you have testified to how it will affect the railroad.

A. I believe so.

Q. Now, Mr. Christie; is the Pennsylvania Railroad willing to have a key-point restriction inserted in the certificate in this case, if the "prior and subsequent rail movement" clause is omitted?

A. Yes.

Q. Now, have you made a study of the key-point situation, as it will affect these seven new routes described in this application?

A. Yes.

Q. Well, now, then, I will ask you to look at the map which has been introduced in evidence here, for reference, as Applicant's Exhibit No. 2. Let us take the cities there, as they appear on that

map. Does the railroad, the Pennsylvania Railroad, desire

111 to have Fort Wayne, Indiana, made a key-point?

A. Yes.

Q. Or is it willing, I might say, to have Fort Wayne, made a key-point.

A. Yes, sir.

Q. That is, if the "prior and subsequent rail movement" clause is omitted.

A. Yes, sir.

Q. How about Grand Rapids, Michigan?

A. The same.

Q. You are willing to have that as a key point, are you?

A. Yes, sir.

Q. Well, now, then, taking the cities as we go north, as shown on the map, on the railroad north of Grand Rapids, I will just name those cities consecutively, and you may give your answer, yes or no, as to whether or not you desire to have each of those points as a key point.

Mr. Eggers. Well, now, Mr. Yockey, has there not been some evidence introduced in the record previous to this time, to the effect that Fort Wayne, Indiana, and Grand Rapids, Michigan,

are the only two points, key points, that are desired?

Mr. HARRY YOCKEY. That was my statement, your Honor.

Mr. EGGERS. Oh.

Mr. HARRY YOCKEY. I testified to that, if we may call it that, but the witness has not done so as yet.

Exam. Harrison. Mr. Yockey, why not ask the witness to state just what points he desires to be key points, rather than have him go through a long list, and name every point shown here, just saying "No" to every one except the points that he wants? I think it will save a lot of time if you will do that.

Mr. HARRY YOCKEY. That will be quite satisfactory, your Honor. I thought it would only take a moment. But I can ask him one blanket question, if you would rather have me do it that way.

Mr. EGGERS. I think that would save time.

Mr. HARRY YOCKEY. All right.

By Mr. HARRY YOCKEY:

Q. Mr. Christie, are there any other cities or towns covered by these seven routes, that the Pennsylvania Railroad desires to have made key points?

A. No.

By Mr. EGGERS:

Q. That is, other than Fort Wayne and Grand Rapids, do you mean?

A. Right.

By Mr. HARRY YOCKEY:

Q. Well, now, then, what are your reasons for designating Fort Wayne and Grand Rapids as key points, or for your being willing to have them made key points?

A. We have sufficient train service between those two points, and the volume of traffic is such that we would not want to haul it by truck, and we are able to give the patrons of the railroad

a service, an expedited service, by handling the freight

113 by rail.

Mr. BARKELL. Before you go any further, Mr. Yockey. I would like to interrupt with a question right here.

Mr. HARRY YOCKEY. Yes.

By Mr. BARKELL:

Q. How about a less-than-carload shipment to Grand Rapids, Mr. Christie?

A. From where?

Q. Fort Wayne.

A. It will be handled by rail.

Q. By rail?

A. Yes, sir.

Q. But will that not hold up the movement of your other cars, if you handle less-than-carload shipments out of Fort Wayne that way?

A. No, sir, it will not, because we will make cars enough, one, or possibly two or three cars per day at Fort Wayne, of less-than-carload freight, for Grand Rapids.

Q. No; I am talking about a shipment now, coming in over the railroad from New York, say, to Fort Wayne, a less-than-carload

shipment, destined to Grand Rapids.

A. Well, that shipment would be billed into Grand Rapids, and would be moved in the car from New York to Grand Rapids direct.

By Mr. CLARDY:

Q. Would that be an instance where it would have to go over your dock at Fort Wayne?

A. No.

114 Q. All less than carload freight, then, for Grand Rapids, goes direct through from New York, does it?

A. Less than carload freight from New York to Grand Rapids is loaded direct in a car and moved from New York to Grand Rapids.

By Mr. EGGERS:

Q. Well, do not take New York, for example, but take some other place where you would not have so much business.

A. Well, there are certain points from which the freight would

come into Grand Rapids, and be transferred—

Q. Where?

A. Or rather, I mean to say, would come into Fort Wayne, and be transferred to Grand Rapids. There are a number of instances where cars are made from distant points to Grand Rapids, but from any point that does not load a car to Grand Rapids, the freight would be loaded into a car at Fort Wayne for Grand Rapids.

Q. And will it be delayed 24 hours?

A. Well, it would not be delayed; no, sir; for this reason, that if we would send a truck out of Grand Rapids—or rather, I mean to say, out of Fort Wayne in the morning, it would not be at Grand Rapids at night, so that we can give that same service by car that we can by truck.

Q. But does not the freight stay at Fort Wayne 24 hours!

A. Yes.

By HARRY YOCKEY:

Q. It will not, though, if it comes in a pool carload, a car that is destined from New York for delivery at Grand Rapids.

A. No.

By Mr. BARKELL:

Q. But we are talking now about less than carload freight.

A. Well, a car of less than carload freight, a pool car, from New York, would go direct to Grand Rapids.

Q. All right. Now, my question was intended to include a

transfer at Fort Wayne.

A. Yes, sir; a shipment from a point that does not make a car to Grand Rapids, will be loaded on—Fort Wayne, if possible, or some other point—just a moment. I have got that wrong. A shipment from a distant point will be loaded on a transfer point other than Fort Wayne if possible, and will be loaded direct to Grand Rapids. Now, in the case of points where it is not possible to make such a transfer—

By Mr. EGGERS:

Q. That is what we would like to know about.

A. It will be loaded on Fort Wayne, and then transferred into a car for Grand Rapids.

By Mr. ANDERSON:

Q. It will be transferred at Fort Wayne, do you mean?

A. Yes, sir; transferred at Fort Wayne for Grand Rapids.

By Mr. EGGERS:

Q. Then it will be delayed there the same 24 hours that you

spoke of a while ago, will it not? .

A. It will receive the same service as it is receiving at the present time, because it takes a day to transfer the shipment.

By Mr. CLARDY:

Q. In other words, then, your truck service and your rail service on that kind of a movement between Fort Wayne and Grand Rapids, would be just about the same in point of time; is that correct?

Mr. HARRY YOCKEY. No; they will not be, because the truck service will be better. I do not think you understand what he is talking about.

Mr. CLARDY. I mean, the average time, as between rail and truck.

Mr. HARRY YOCKEY. No.

The WITNESS. We do not expect to handle Grand Rapids by truck.

By Mr. CLARDY:

Q. I know that; Witness, but what I had in mind was just to see if I correctly understood your answer. If a movement, comes into Fort Wayne, less than carload, from some point be ond Fort Wayne, destined to Grand Rapids, it will be handled by rail under all circumstances, regardless of what happens to this application, as I understand it. Now, the time that would be consumed in

making the delivery to Grand Rapids, where a transfer at Fort Wayne is involved, when it moves by rail, would be just as fast as if you should try to ship that freight by way of this proposed truck service, assuming that it is authorized?

Mr. HARRY YOCKEY. Well, now, I want to object-

By Mr. CLARDY:

.Q. That is right, is it not? Mr. Eggers. Just a moment.

Mr. HARRY YOCKEY. To any question of that sort.

Mr. CLARDY. I think that is what he said, and I just wanted to be sure that I understood him.

Mr. Eggers. Yes, I think that is correct. However, just to clear it up, if I may state it another way.

Mr. CLARDY. Yes.

By Mr. EGGERS:

Q. Would the situation be this, Mr. Christie, that in the event this application is granted, you will not be giving any better service to Grand Rapids through Fort Wayne than you are giving now? Is that correct, or not?

A. That is right, yes, sir; because it will not be our intention to handle Grand Rapids by truck.

Mr. Eggers. Does that clear it up?

Mr. CLARDY. I think so; yes; thank you.

By Mr. BAKELL:

Q. That same thing would be true of . ; two points that you might select on the route; would it not?

A. Well, now, I don't know about that. Mr. Anderson. Well, it would have to be.

Mr. HARRY YOCKEY. Well, that would depend, of course, on what we are going to establish.

A. I am going to have to have a specific example before I will be able to answer a question like that.

By Mr. BARKELL:

Q. Well, supposing we say Cadillac, or Mackinaw City. A. Well, we do not expect to handle Kalamazoo ton-

nage on these trucks; only local tonnage. There is enough

tonnage in Kalamazoo so that we can use the cars.

Q. I might say, Mr. Christie, that the reason why we are questioning you along this line is because in your Exhibit No. 6 you show an actual saving of time in delivery to these different places.

A. But I do not, to Kalamazoo. You will not find Kalamazoo on there, and you will not find any shipment to Grand Rapids,

either.

Q. I see one here to Grand Rapids.

A. To Grand Rapids?

Q. Yes.

A. I think not.

Mr. EGGERS. That is Big Rapids. The WITNESS. Yes, Big Rapids.

Mr. BARKELL. That is correct.

The WITNESS. Our trucking service is practically confined to the intermediate stations.

By Mr. BARKELL:

Q. Then it is the small towns, the small intermediate towns, that are going to get the additional service; is that correct?

A. Yes, sir. We expect to give these small intermediate towns service that will be more nearly on a par with that at the larger stations.

Mr. BARKELL. All right, thank you. I think that answers the question as far as I am concerned.

By Examiner HARRISON:

Q. Referring again, for just a moment now, Mr. Christie, to the operation between Fort Wayne and Grand Rapids: The less than carload shipments will be placed in a car, and the car will be transported from Fort Wayne to Grand Rapids without any stops for unloading or loading at intermediate points; is that correct?

A. Yes, sir-that is, a through car.

Q. Supposing a shipment were to originate at Kendallville, Indiana—is that a point on the Pennsylvania Railroad?

A. Yes.

Q. Destined, say, to Muskegon, Michigan. How would that

shipment be handled?

A. Well, we would truck that shipment to Kalamazoo, where we would have a connecting truck for Grand Rapids, and that truck would go over to Muskegon.

Q. That would be truck service all the way through; would

it?

A. In that case it would be truck service all the way through; yes, sir; and that would be affected by this "prior and subsequent rail haul" proposition.

By Mr. BARKELL:

Q. In other words, Mr. Christie, you intend to apply for intrastate rights in Michigan; do you not?

A. Yes, sir.

Mr. Eggers. Let me also ask one question right here, while we are on the subject.

By Mr. EGGERS:

- Q. Supposing, Mr. Christie, that you have a shipment from Fort Wayne, or from some point outside of Fort Wayne, that is going to be interchanged at Fort Wayne, destined to a point north of Grand Rapids say, Cedar Springs—is that on the Pennsylvania Railroad?
 - A. Yes, sir.

Q. All right. How would a shipment of that sort be handled—that is, how would it move?

A. A shipment from Fort Wayne, Indiana, to Cedar Springs, Michigan, received on Monday, say, would be loaded into a car on Monday at Fort Wayne, and would be in Grand Rapids Tuesday morning.

Q. How would it move?

A. By rail.

Q. All right.

A. It would be transferred from Fort Wayne to Grand Rapids by rail, and would be there Tuesday morning, and be trucked out to Cedar Springs that same Tuesday morning.

Q. Just a moment, now.

A. We can handle it in the opposite direction, too.

Mr. Eggers Off the records

(Discussion outside the record.)

Mr. EGGERS. Back on the record. You may proceed, Mr. Yockey.

121 Mr. HARRY YOCKEY. Do your Honors have any further questions of the witness at this time?

Mr. Eggers. I thing at this time you should be permitted to proceed with your witness.

Mr. HARRY YOCKEY. Very well.

By Mr. HARRY YOCKEY:

Q. Did you finish giving the Board all of your reasons, Mr. Christie—I do not recall whether you did or not; I do not know whether we got off the track, or not—as to why you want these points that have been mentioned, as key points?

A. (No answer.)

Q. For example, did you say anything regarding car classifica-

tion to key points?

A. Well, now, I do not recall just exactly what was said about that. I think I did, though. Will you go back and read that, please?

Q. Well, to save time, let me ask you the question: What does

the classification of cars have to do with the key points?

A. Where there is a sufficient volume of freight, and we have car classification between those points, we can give the service by

rail, and we do not desire to haul it by truck. Between Fort Wayne and Grand Rapids there is a sufficient volume of tonnage to justify cars of less than carload freight, and we can give the service by rail.

Q. Well, now, Mr. Christie, you answered a question a 122 moment ago here regarding the movement of freight that was loaded on a Monday morning. In this particular illustration, would there be any difference if it was loaded on Tuesday?

A. (No answer.)

Q. Was that a triweekly illustration, in other words?

A. Oh, no. I just simply used that-

Q. As an illustration?

A. To illustrate the movement.

Q. Well, now, then, why does not the Pennsylvania Railroad desire these cities that I asked you about, as key points, that you say you do not desire as key points?

A. How was that again?

Mr. HARRY YOCKEY. Strike out the question, and let me put it a different way.

By Mr. HARRY YOCKEY:

Q. What factors are considered by you, or should be considered, in determining whether a point should or should not be a key point?

A. The factors of car classification on the Pennsylvania Railroad; the freight train service on the Pennsylvania Railroad; the volume of traffic between the points; the points of origin and destination of the traffic; and the service by truck—those items should all be taken into consideration.

Q. How about the expeditious handling of the freight?

Exam. HARRISON. Would not the item of volume be the principal factor there, Mf. Christie?

123 The WITNESS. Well, the volume, and the train service. I would say would be the principal factors.

Exam. Harrison. Pardon the interruption.

Mr. HARRY YOCKEY. That is all right.

A. What was your question?

By Mr. HARRY YOCKEY:

Q. Did you mention the expeditious handling of the freight!

A. I do not recall whether I mentioned it or not, but that would be one of the factors; yes, sir.

Q. Does that have any effect

A. Well, by the expeditious nandling of the freight—or, the train service, certainly we could expedite the movement of the freight.

Q. All right. Now, then, Mr. Christie, are all of these shipments to which you have referred, and which you have described

herein as affecting your consideration of key points, as explained by you, shipments that are to be transported in interstate commerce!

A. Yes.

Q. You have not taken into account any intrastate shipments, have you!

A. No.

Q. And are all of the operations which you have described for the purpose of transporting the freight of the Pennsylvania

Railroad?

A. Yes.

Q. In common carrier service?

A. Yes.

Q. As defined by the Commission!

A. Yes, sir.

Q. And the shipments are all of commodities generally; is that right?

A. Yes, sir.

Q. According to the tariffs of the Pennsylvania Railroad?

A. Yes.

Mr. HARRY YOCKEY. Now, if the Board please, with the limitations that I have indicated earlier in the proceeding, we are through I believe with Mr. Christie on direct—except for disposing of those two matters.

Mr. EGGERS. Very well.

Mr. HARRY YOCKEY. Therefore, these gentlemen may cross-examine him at this time, if they care to do so, or if they desire to defer their cross-examination, as I believe Mr. Clardy, at least, indicated, why, that is perfectly agreeable also.

Mr. Clardy. I would very much prefer to defer my cross-examination until Mr. Yockey has completely finished his direct examination, because I want to go at it all at one time; and furthermore; what I have to ask the witness will depend somewhat on what your rulings are, on the two questions that have been left

Mr. Anderson. I feel the same way about it your.
Honors. We would like to have Mr. Yockey finish up with

the witness on direct before we begin our cross-examination.

Mr. Harry Yockey. Well, as I say, it is perfectly agreeable to the one way or the other; whatever the Board and the Commission want to do, is all right with us.

Mr. Eggers. Now just a moment, gentlemen. Does anybody else want to cross-examine this witness at this time? (No response.) I hear no response.

Mr. HARRY YOCKEY. I think myself it would be better if it were all done at one time.

Mr. EGGERS. All right,

Mr. CLARDY. That seems to be the general attitude of counsel for protestants, on the matter.

Mr. Eggers. All right, gentlemen.

The WITNESS. Are you through with me, then?

Mr. Egges. Just a moment. There may still be a few further questions from the bench.

Mr. BARKELL. I have nothing.

Exam. HARRISON. I have no questions just now.

Mr. Econs. I have just one or two further questions that I would like to ask you, Mr. Christie.

By Mr. EGGERS:

Q. In establishing these key points, does not the sum and substance of the elements that establish the key points, depend entirely upon the volume of freight?

126 A. I do not just understand that question.

Q. I say, in the establishing of your key-points, does it not in the main depend entirely upon the volume of freight?

A. The principal elements, as I believe I stated a moment ago here, are the volume of freight and the train service that we have between the two points; yes, sir.

Q. Well, now, supposing that back in the good old days, when the railroads had more freight than they could handle—there was a time like that, was there not?

A. No, sir.

Q. Well, for the purpose of my question, let us just suppose that there was such a situation.

A All right.

Q. Maybe there is a time like that coming.

A. All right.

Q. Would there be, then, other key-points that you could establish, and that you would be willing to have in your certificate?

A. Well, that is altogether possible, I would say, yes, sir; that is, it is altogether possible that if the volume of freight was great enough to justify ears being made from various points to other points, then I would say that it might be necessary to establish other key-points.

Q. Well, now, supposing for example, that you had plenty of freight into and out of Kalamazoo, and the same situa-

127 tion applied to Muskegan, and Cadillac, Traverse City and Mackinaw City.

A. Well-

Q. Would your answers be the same?

A. No, sir; it would not be that way.

Q. Why not?

A. For the reason that when you have a shipment—well, let me put it this way: Supposing you have a shipment from Kala-

mazoo, going to Muskegan, Michigan, or up in there somewhere: and you want to truck that particular freight. Then if you have restricted yourself to key-points up there, so that you have to load the freight just that way, out of route, you will delay it accordingly.

Q. Not if you have sufficient to justify a pool car-

A. Well-

· Q. Or something of that sort.

A. If you had sufficient freight from Kalamazoo—or rather, I mean to say, from Kendallville, Indiana to Grand Rapids, that would be one thing, but I do not suppose there would ever be a time on the railroad when that would occur.

Q. Well, now, Mr. Christie, to shorten it, does it not just boil itself down to the fact that it is primarily a matter of volume, or

at least, volume is the big factor?

A. Volume and service are the big things, the two big factors in the proposition, yes, sir.

By Mr. BARKELL:

128 Q. If they have the volume, they give the service; is that it?

A. Well, if you had a sufficient volume of less than carload freight, and a sufficient volume of carload freight, then you would get the service; yes, sir.

Mr. EGGERS: I have no further questions. Are there any further questions of the witness at this time?

Mr. HARRY YOCKEY. I have nothing further.

Mr. EGGERS. If not, you may be excused, subject to recall.

(Witness excused.)

Mr. Eggers. Are you ready to proceed with your next witness, Mr. Yockey?

Mr. HARRY YOCKEY. Yes.

Mr. Eggers. Call him, please.

Mr. HARRY YOCKEY. Mr. Symes.

J. M. SYMES was sworn and testified as follows:

Direct examination by Mr. HARRY YOCKEY:

Q. Will you state your name?

A. J. M. Symes.

Q. Where do you live?

A. Chicago, Illinois.

Q. What is your connection, if any, with the Pennsylvania Railroad?

A. General manager, western region.

Q. What does the western region comprise?

A. Generally, the territory west of Cleveland and Columbus, Ohio—not including Cleveland; and Cincinnati.

Q. And the territory that is involved in the application now on hearing, is included within that western region, is it?

A. Yes, sin

Q. Now, Mr. Symes, how long have you been with the Pennsylvania Railroad—or rather, strike that out. What was your employment prior to the time that you went with the Pennsyl-

vania Railroad?

130 A. Immediately prior to the last three years!

Q. Yes.

A. I was vice president of the Association of American Railroads, in Washington, D. C.

Q. In what capacity again, please?

A. Vice president.

Q. And what was your employment prior to that?

A. Well, perhaps it would save time, and make the record a little more connected, if I would go back and start at the beginning.

Q. Yes.

A. In 1916 I entered the employ of The Pennsylvania Railroad as a clerk on the Pittsburgh Division, at Pittsburgh, Pennsylvania, and I occupied various clerical capacities until 1920, when I was transferred to Cleveland, Ohio, as freight movement director. From 1920 until 1923 I was freight movement director at that location. From 1923 to 1927 I was freight movement director of the Central region, located in Pittsburgh, Pennsylvania. In 1927 and 1928 I was chief clerk to the general manager of the western region at Chicago. In 1928 and 1929 I was superintendent of passenger transportation, Western region, at Chicago. From 1929 to 1934, I was superintendent of passenger transportation of the Eastern region, in Philadelphia, Pennsylvania. In 1934 and 1935.

I was chief of freight transportation for The Pennsylvania

131 Railroad System, located in Philadelphia. From the latter part of 1935 until February I, 1939, I was vice president, Operations and Maintenance Department, of the Association of American Railroads, in Washington, as I stated; and from February 1, 1939, to the present; general manager of the Western region, Pennsylvania Railroad.

Q. As such manager of the western region for The Pennsylvania Railroad, do you have entire charge of the operations of the rail-

road?

A. I have jurisdiction and charge over the operations and maintenance of the Western region, as well as setting up service, both freight and passenger, for the patrons of The Pennsylvania Railroad.

Q. Are you connected with The Willett Company of Indiana, Inc., the applicant in this case!

A. I am.-

Q. In what capacity?

A. Director.

Q. Now, then, Mr. Witness, are you acquainted with the transaction whereby The Pennsylvania Railroad has entered into a contract—or rather, has there been any transaction, first, whereby The Pennsylvania Railroad Company has entered into a contract with The Willett Company, in anticipation of this particular service in Michigan?

A. Yes.

Q. And has a contract been executed between the two companies?

132 A. Yes.

- Q. Who signed that contract on behalf of the railroad?
- Q. And who, on behalf of The Willett Company?

A. Mr. McArdle,

Q. Why does The Pennsylvania Railroad desire The Willett

Company to perform this service!

A. Because from our experience, they are perfectly capable of performing a satisfactory service for the handling of traffic, such as is contemplated in this case.

Q. And it is not your desire to have an independent truck

line perform this service in Michigan for you, is it?

A. No.

Mr. CLARDY. Now, just a moment. I interpose the same objection as before, and I move that the answer be stricken out; and I assume the record may show the same ruling, and an exception. I simply want the objection recorded.

Mr. BARKELL. That same question was answered in some detail .

by the preceding witness, was it not?

Mr. HARRY YOCKEY. Well, can we do this, your Honor: The answer of this witness will be exactly the same as that of Mr. Christie, if we are able to get it into the record. Can we stipulate, counsel, that the same answer may go in, instead of keeping Mr. Symes here over tomorrow, if your ruling is that way?

In other words, if you rule that you will permit it to be admitted, as far as Mr. Christie is concerned, then it can be likewise admitted as far as Mr. Symes is concerned.

Mr. CLARDY. Well, I would assume, of course, that this witness is not going to contradict the other witness.

Mr. HARRY YOCKEY. That is correct. As I said before, the

testimony will be the same.

Mr. CLARDY. And handling it two witnesses at a time will not make it any worse than if we handle it by one witness at a time.

Mr. HARRY YOCKEY. Oh, no.

Mr. CLARDY. Or any better, for that matter.

Mr. HARRY YOCKEY. No.

Mr. Eccess. Just a moment, gentlemen. The objection to the pending question will be overruled. I think the witness has already answered the question anyway.

By Mr. HARRY YOCKEY:

Q. What are your reasons?

Mr. CLARDY. Well, now, that is the question that I thought I was objecting to, as to what his reasons are.

Mr. HARRY YOCKEY. I had not asked that question as yet.

Mr. Eggers. No.

Mr. BARKELL. Well, I take it, it would be the same situation there, that we just got through discussing.

Mr. CLARDY. You are going into that tomorrow, as I under-

stand it.

Mr. HARRY YOCKEY. Yes.

Mr. CLARDY. Well; then, may we not have a gentlemen's agreement here, if that is agreeable to the Joint Board, that we will let the answer that goes in tomorrow, if it does go in, apply to and cover the testimony of both of them, both of the witnesses?

Mr. HARRY YOCKEY. Well, now-

Mr. EGGERS. Why, I think that is all right. Will you withdraw

that question, then, or do you want us to rule on it?

Mr. HARRY YOCKEY. I do not want to withdraw the question, no, your Honor; but I think we will be willing to agree that the answer of this witness will be the same as that of Mr. Christie, if Mr. Christie is permitted tomorrow to answer. I understand Mr. Clardy is agreeable to that.

Mr. CLARDY. Yes. It would be strange, of course, if it were not

the same.

Mr. HARRY YOCKEY. Yes.

Mr. Eggers. Is that agreeable to you gentlemen?

Mr. HARRY YOCKEY. I would ask your Honor that you withhold your ruling on this until we conclude with Mr. Christie tomorrow, after we have argued the legal end of it.

Mr. Eccens. All right.

Mr. HARRY YOCKEY. I understand Mr. Clardy is agreeable to that.

Mr. CLARDY. I am agreeable to the Board withholding its ruling, as far as this witness is concerned, until it has passed on the other matter tomorrow.

Mr. Eggers. All right.

Mr. HARRY YOCKEY. That will just save Mr. Symes some trouble. He is very busy. He is general manager of the Western region of The Pennsylvania Railroad, as he has testified, and he cannot come back tomorrow; and his answer, as I say, would be the same as that of the other witness, Mr. Christie.

Mr. CLARDY. Oh, if Mr. Symes cannot be here tomorrow, that is all right.

Mr. HARRY YOCKEY, That seems to be agreeable, your Honor.

Mr. EGGERS. Well, now, just to be sure that we have the record straight: there has been an objection raised to a question, and I think in order to keep the record-clear, we are going to sustain that objection, and not hold the ruling in abeyance; with the understanding, however, that you gentlemen have agreed that the answer to the question that was propounded to Mr. Christie, which was almost identical with this question, if it be allowed to go into the record tomorrow, after a ruling, will be the same or substantially the same, as the answer which this witness would make to the question which has been asked him.

Mr. CLARDY. Yes.

Mr. HARRY YOCKEY. That is right.

Mr. Eccers. With that understanding, we will sustain the objection.

136 Mr. CLARDY. All right.

By Mr. HARRY YOCKEY:

Q. Now, Mr. Symes, will The Pennsylvania Railroad use the service of The Willett Company over these seven routes if a certificate is granted?

A. Yes.

Q. And the contract that you have covers these routes, does it?

A. Yes.

Q. The seven routes.

A. Yes.

Q. Now, what is the fact as to whether or not The Willett Company of Indiana, Incorporated, is a subsidiary of The Pennsylvania Railroad?

Mr. Anderson. To which we object, on the ground that it has already been answered.

Mr. EGGERS. I think so,

Mr. HARRY YOCKEY No, sir; that has not been answered by anybody. I referred to it in my opening statement, but there has been no testimony to that effect as yet.

Mr. EGGERS. Did not Mr. Christie testify to that?

Mr. HARRY YOCKEY. No.

Mr. Eggers. All right. The witness may answer.

A. It is.

By Mr. HARRY YOCKEY:

Q. What is the process by which—or rather, will you expl. in to the Joint Board how it is a subsidiary?

137 A. Why, the stock is held through the American Contract & Trust Company.

Q. Is all of the stock of The Willett Company of Indiana, Incorporated, owned and held by the American Contract & Trust Company of Philadelphia, Pennsylvania?

A. Yes, sir.

Q. And who owns all of the stock of the American Contract & Trust Company of Philadelphia?

A. The Pennsylvania Railroad.

Q. So that by that method, it is a subsidiary?

A. Yes, sir.

Mr. CLARDY. Can we agree, then, for the purpose of the act that The Pennsylvania Railroad owns and controls the applicant company?

Mr. HARRY YOCKEY. Well, you can put it any way you please. It is a subsidiary of the railroad company, yes; but not in the sense that it controls its actions, its individual actions, no.

Mr. CLARDY. Well, I will ask some questions of the witness later

on about that, then.

Mr. HARRY YOCKEY. That is all right. You may ask him anything you like on cross-examination.

Mr. CLARDY. Thank you.

Mr. HARRY YOCKEY. That is all. Mr. Eggers, Cross-examine.

138 Cross-examination by Mr. Anderson:

Q. Mr. Symes, do you set up the schedules of The Willett Company,—and when I say "you," I mean, The Pennsylvania Railroad?

A. Yes, sir; that is, we suggest the schedules that we feel will

provide the necessary service.

Q. So that I take it, then, you regard The Willett Company as merely an arm, or an agency of The Pennsylvania Railroad Company, do you?

A. (No answer.)

Q. You set up their schedules, or suggest them, as you say, and they are a wholly-owned subsidiary, and they do as directed by The Pennsylvania Railroad management; that is correct, is it not?

A. Not entirely, no.

Q. All right.

A. They have a separate management, and function as such.

Q. Oh, yes, nominally they have a separate management, but how is it that you do not control them in any other respect?

A. Well, because they have a vice president and general manager in charge of their operations.

Q. Who is he?

A. Mr. J. P. McArdle.

Q. McArdle!

A. Yes.

- Q. The stockholders of The Willett Company are all connected with this Contract & Trust Company, are they not?
 - A. Well, the Contract & Trust Company is the stockholder.

Q. Yes. They are the same, identically the same.

A. Yes.

Q. And then all of the stock is owned by The Pennsylvania Railroad, through the

A. American Contract & Trust.

Q. Yes.

A. Right.

Mr EGGERS. Mr. Witness, you have been answering in a rather low tone, and some of the questions you answered by merely nodding your head, which I assume the Reporter took to mean "Yes." Be sure and answer each question out loud, for the record. If you just move your head, the Reporter may not get it.

The WITNESS. I am sorry.

By Mr. ANDERSON:

Q. Where was this application prepared?

A. (No answer.)

Q. That is, in whose office, if you know?

A. The application for this certificate!

Q. Yes; the application that is on hearing here at the present moment, nominally of The Willett Company.

A. I cannot answer that question,

Q. You do not know?

A. It was filed by The Willett Company.

Q. Yes; we know that it was filed by The Willett Company, at least in the name of The Willett Company.

A. Right.

Q. But you do not know where it was prepared?

A: No.

Q. Do you know where any of these exhibits were prepared?

A. The exhibits-

Mr. HARRY YOCKEY. Oh, now, I want to object to this if your Honors please. We did not go into the matter of any of the exhibits with this witness on direct examination.

Mr. Anderson. I will remind your Honors that the preceding witness, Mr. Christie, said that the map department of The Pennsylvania Railroad Company had prepared the first two exhibits.

Mr. EGGERS. Yes, there was some evidence that the map department of The Pennsylvania Railroad, I believe, or a me department of the railroad, had something to do with the preparation of one or two of the exhibits.

Mr. HARRY YOCKEY. But I had not asked this witness anything about that, your Honor.

Mr. EGGERS. I think that is true.

Mr. HARRY YOCKEY. That matter was not gone into at all on the direct examination of this witness.

Mr. Anderson. All right. Then we will got at it another way.

The fact is, of course, that you have not asked this wit-

141 ness very much of anything.

Mr. HARRY YOCKEY. Well, whether he was asked much or little, you should cross-examine him on his direct testimony. You probably will not have very much to ask him.

Mr. Anderson. No; I probably will not, because I do not think that his testimony amounted to anything. I am through, as far

as I am concerned.

Mr. CLARDY. Well, I have a question or two.

By Mr. CLARDY:

Q. Witness, you would not seriously want the Commission to believe that The Pennsylvania Railroad Company does not actually control the actions of its subsidiary corporation, The Willett Company, would you?

A. I would; yes, sir. I would say that there is cooperation between the two companies, yes; but as to control, no, sir. There is cooperation, with respect to the furnishing of adequate service.

Q. Do you know of one single instance, in all of your time as a directory of The Willett Company, when the wishes of the parent company with respect to the carrying on, or the conduct of the business by The Willett Company, have been disregarded by The Willett Company? If so, will you please tell us when it was.

A. No; I do not.

Q. So, as a matter of fact, then, whether there is any compulsion or not, from the practical standpoint, all of the wishes,

whims, and desires of The Pennsylvania Railroad Company that are expressed or conveyed to The Willett Company, result in the action desired by The Pennsylvania Railroad Company—

Mr. HARRY YOCKEY. Just a moment.

By Mr. CLARDY:

Q. Is that not right?

Mr. HARRY YOCKEY. Now, just a moment. There is nothing in this record about any whims, or wishes, or desires, or anything of that sort.

Mr. CLARDY. Yes there is. I just put that in.

Mr. HARRY YOCKEY. I submit that the question is not proper.

Mr. EGGERS. Will you let me hear the question again, please, Mr. Reporter,

(Question read.)

Mr. Eccers. The objection is overruled.

By Mr. CLARDY:

Q. De you understand my question, Witness?

A. Let me hear it again.

Mr. CLARDY. Read it once more to him, please, Mr. Reporter.

(Question again read.)

A. I don't know what you mean by "wishes, whims, and desires", and so forth.

By Mr. CLARDY:

Q. Well, I mean by that, anything in the way of a request or a suggestion, or the expression of a desire.

A. I would say that the management of The Willett 143 Company operates the affairs of The Willett Company, as

I stated before, in cooperation with the railroad, in con-

nection with service matters, and things of that kind.

Mr. Clarry. Well, now, that does not answer the question at all. Will you read the question once more to the witness, please, Mr. Reporter, and I would like to have the witness answer the question yes or no.

(Question again read.)

Mr. CLARDY. I may say, Witness, that I can stay here just as long as you can, and you will be here into tomorrow if you do not

answer my questions directly.

Mr. HARRY YOCKEY. Well, now, if the Board please. I want to move that that last statement of Mr. Clardy be stricken from the record. It is not proper for counsel to make that sort of a statement to a witness.

Mr. Eggers. Which statement do you mean, Mr. Yockey; the

very last statement?

Mr. HARRY YOCKEY. Yes, your Honor, about Mr. Symes being here over into tomorrow.

Mr. Clardy: I do not think it should be stricken, your Honor, because I think it was very apparent that the witness deliberately evaded a direct answer to my question, and I want him to understand that I so understood and regarded the answer he gave, because I am not trifling here. This is very serious to us.

Mr. HARRY YOCKEY. Well, now, your Honor, if anybody is doing any trifling here, we certainly are not. I would like to have the record read by the Reporter, the question and the answer, because the record will show that the witness stated he did not know what counsel meant by "wishes, whims, and desires," and so forth.

Mr. Eggers. All right. But you were referring to Mr. Clardy's last statement—or his statement following the reading of the question.

Mr. HARRY YOCKEY. Yes.

Mr. Eggers. You are objecting to that statement?

Mr. HARRY YOCKEY. Yes.

Mr. Clardy. Well, then, let us have the record read once more. (The record was read.)

Mr. CLARDY. That does not answer the question, your Honor.

Mr. EGGERS. As I understand it, Mr. Yockey, you were objecting to the statement of Mr. Clardy just read by the Reporter.

Mr. HARRY YOCKEY. Yes-to his insulting statement,

Mr. CLARDY. There was nothing insulting about it.

Mr. Eggers. Well, now, just a moment.

Mr. CLARDY. The witness is just simply fencing with me, your Honor, when the question could be answered directly, and I do not intend to let him fence with me if I can help it.

145 Mr. Eggers. Just a moment, now, gentlemen, just a moment. I think we can satisfy both of you. In the first place, the statement of Mr. Clardy can go out, about keeping the witness here over into tomorrow. Now, I do not think that the witness answered the question.

Mr. CLARDY. With that ruling, your Honor, I do not care

whether it goes out or not.

By Mr. CLARDY:

Q. Now, Witness, I would like to have you answer my question,

A, I thought I had answered it in my preceding answer, to your other question.

Q. I did not hear that.

A. I say, I thought I had answered your question-

Q. No, you did not.

A. In what I said before.

Q. You can answer this particular question by yes or no, and that is the way I would like to have you answer it.

A. All right. State it again.

Mr. Eggers. Read the question once more to the witness, Mr. Reporter.

(Question.again read.)

Mr. HARRY YOCKEY. And you want him to answer that question yes or no, do you?

Mr. CLARDY. Yes.

Mr. EGGERS. Well, as I understood it, the witness answered that he did not understand what you meant by "wishes, whims, and desires," and so forth.

The WITNESS. Yes.

Mr. CLARDY. Then I told him what I meant by that.

Mr. Eggers. Yes.

Mr. CLARDY. Now, I would like to have an answer.

Mr. Eggers. Well, now, you have really got two questions there, Mr. Clardy. Why not just put another question, the way you want it.

Mr. CLARDY. All right.

By Mr. CLARDY:

Q. My question to you now, Witness, is this: whenever The Pennsylvania Railroad Company wants The Willett Company to do something, in a certain way, and expresses that want or desire in plain language to The Willett Company, the desired results are obtained by the railroad company, are they not?

A. Well, I would not say that it has been necessary for us to do what you have been talking about, or to take any action such as

you are suggesting here, because-

Exam. Harrison. Mr. Witness, can you not answer that question by yes or no?

A. The answer is: no.

By Mr. CLARDY:

Q. The answer is: no?

A. Right.

Mr. EGGERS. All right.

147 Exam. Harrison. Let us try to get along a little faster here, gentlemen.

Mr. CLARDY. All right.

By Mr. CLARDY:

Q. Now, Witness, will you give me one single instance in which there was the expression of a desire on the part of The Pennsylvania Railroad Company, that a certain action be taken, or a certain course followed by the subsidiary, where that action was not taken, or where that course was not followed?

Mr. HARRY YOCKEY. Well, now, just a moment. Counsel is assuming something, now. He is trying to get another answer.

Mr. CLARDY. No.

Mr. EGGERS. I may have misunderstood his answer, but— Mr. HARRY YOCKEY. Mr. Clardy is assuming now that there has been such a situation.

Mr. CLARDY. No. I am asking that question on the basis of the answer that he just gave. Maybe I misunderstood the answer.

Mr. Anderson. I think the purport of the answer was, "No, the desired results are obtained."

Mr. CLARDY. No. I did not understand it that way. Do I correctly understand now that when the witness answered "No," he meant that there has never been any instance when there has been any disobeying of orders?

Mr. HARRY YOCKEY. Yes.

By Mr. CLARDY:

Q. Is that what you meant to say, Witness?

148 A. Right.

Mr. CLARDY. Well, then, that is all right. That is not the way I got it. I understood it the other way.

By Mr. CLARDY:

Q. Now, Witness, did you as a director of this company actually, have anything to do with the preparation of these exhibits, or did you make any suggestions that led to the preparation of these exhibits—or rather, I mean to say, this application?

Mr. Eggers. The application?

Mr. CLARDY. Yes.

A. Well, perhaps I can answer that question better in this way: I am not particularly familiar with it, but as general manager of the Western region of The Pennsylvania Railroad, I can say that from studies that were made under my direction, it was deemed necessary, in order to provide the proper kind of service for us to make application for a certificate here.

By Mr. CLARDY:

Q. Now, when you say "us"--

A. The Pennsylvania Railroad.

Q. You are speaking of The Pennsylvania Railroad?

A. Yes, sir.

Q. All right. Now, then, as a director of The Willett Company, did you do anything with respect to the preparation or filing of the application, or getting ready for this hearing?

A. The directors of The Willett Company, of Indiana, approved their applying to the Interstate Commerce Com-

149 mission for the necessary certificate.

Q. That is one instance, then, in which The Pennsylvania Railroad Company told The Willett Company what it wanted, and the directors approved it; is that correct?

A. Yes.

Q. Yes, and you attended the meeting and helped in the approval of it, did you not?

A. I was at the meeting at which it was approved; yes, sir.

Q. But you took no active part in anything that happened there?

A. It was not necessary.

Q. Why not?

A. Because it was just-well-

Q. Because it had already been determined by the railroad company; that is correct, is it not?

A. The railroad company determined that it needed the service.

Q. Sure.

A. And it decided to have The Willett Company of Indiana

perform the service for the railroad company.

Q. Very well. Now, over my objection you were permitted to answer a question or two, and so was the preceding witness. I want to find out now if you made any independent investigation, either, on behalf of the railroad company or its subsidiary, The Willett Company, into the available trucking service already in the field, before this application was filed?

Mr. Harry Yockey, Now, just a moment. We want to object to that. The Commission has held in all of these rail cases that the Commission has no jurisdiction or authority to require a railroad to deal with an independent truck line. The Commission has held that that is outside of its jurisdiction, and that the railroad has a right to deal with its own subsidiary; and the Commission has no jurisdiction or authority to require the railroad to do otherwise. Now, this particular question, as to whether he did or whether he did not make such an investigation that counsel refers to, is not pertinent to this particular issue.

Mr. CLARDY. Well, now, I am most happy to have that statement of Mr. Yockey in the record—

Mr. HARRY YOCKEY. It was made for the record.

Mr. Clardy. Because it conforms to my theory of the case. Whether I am right, or whether he is right, at least, we agree on the facts. I contend, under the statute, that in every case it is permissible, and altogether proper, to find out whether the applicant, or any shipper, or anyone else who appears in support of the application, has made any investigation into the already available transportation facilities. I respectfully insist on an answer to my question, and I want to insist that it be answered categorically, yes or no.

Mr. EGGERS. Will you let me hear that question again, please,

Mr. Reporter.

(Question read.)

Mr. HARRY YOCKEY. Are you through, Mr. Clardy?

Mr. CLARDY. Yes.

Mr. HARRY YOCKEY. I again raise the point, if the Board please, that there is no jurisdiction involved here. The Commission has held repeatedly, in all of these cases, that it has no jurisdiction to require that:

Mr. Anderson. It is not a question of jurisdiction.

Mr. HARRY YOCKEY. Well, if the Commission does not have jurisdiction of the subject matter, then any inquiry into it would be beyond the issue of the case.

Mr. Eccess. The question went to an inquiry or investigation

by The Willett Company, did it not?

Mr. HARRY YOCKEY. No. your Honor. He was not asking about The Willett Company. His question went to some inquiry or investigation by The Pennsylvania Railroad.

Mr. Eggers. No; not as I understood it.

Mr. BARKELL. How about that, Mr. Clardy?

Mr. CLARDY. My question specifically went to whether or not the witness had made any investigation. I do not care in what capacity he was acting.

Mr. HARRY YOCKEY. All right.

Mr. Clardy. He is the witness here, now, and I am entitled to find out what he knows.

Mr. Eggers. The objection is overruled.

Mr. HARRY YOCKEY. As I understand it, your Honor, the exceptions are automatically noted.

Mr. Eggers. Yes.

Mr. HARRY YOCKEY. For both sides.

Mr. Eggers. Yes. The Reporter will show an exception to each adverse ruling.

Mr. Clardy. I have been going on that same assumption, also.

Mr. HARRY YOCKEY. Yes.

Mr. Eggers. Your exceptions are noted.

By Mr. CLARDY:

Q. Now, Witness, will you answer my question, please.

A. Give it to me again.

Mr. Clardy. Will you read it.

(Question read.)

A. I did not.

By Mr. CLARDY:

Q. Did you have anything to do with directing the preparation for this case, or in any way directing the activities on behalf of the Pennsylvania Railroad, in getting ready for this case?

A. I did not.

Q. Who did for that company?

A. Mr. Christie.

Q. He is not your superior, is he?

A. Noa

Q. He is your subordinate?

153 A. Yes.

Q. Did you issue any orders to Mr. Christie, to make any investigation into the transportation facilities already available in the field?

A. I did not.

Q. Do you know whether or not he made such an investigation?

A. I do not.

Q. Do you, yourself, without having made such an investigation, have any present knowledge of the facilities that are already being offered by the motor carriers to the public between any of the points involved in this application?

A. No.

Q. Do you know whether or not Mr. Christie has such knowledge!

A. I do not.

Q. You have not discussed that subject with him?

A. No.

Q. Do you know whether or not anybody on behalf of The Pennsylvania Railroad Company, made any such investigation to discover the available facilities.

A. I cannot say:

Q. Are you the sole person representing the railroad company, or connected with the railroad company, who decides and determines the question as to whether or not you will use truck service?

A. Insofar as the Western region of the Pennsylvania Railroad is concerned, I am; yes, sir.

Q. Are you the man, then, who made the arrangements with some carriers up in Michigan with respect to service that they are presently rendering you between some of the points involved in this application?

A. I sign—or, I approve most of the contracts.

Q. Do you recall at this time the identity of the carriers, the motor carriers, that are serving you in Michigan now?

A. No.

Q. Well, you know, do you not, that there are such carriers?

A. In Michigan!

Q. Yes.

A. Oh, yes.

Q. If this application should be granted in its entirety, the operations between some of the points here involved, will be over the precise routes that are at the present time being operated by certain independent truck line companies, will they not?

A. Independent truck companies

Q. Yes.

A. In what kind of service?

Q. In service for your railroad of the general type that is described in this application.

A. A very small part of it.

Q. Well, there is some such operation, is there not?

A. I believe there is.

Q. Or there will be.

155 A. Yes, sir; but just a small part of it.

Q. Do you propose that this service by The Willett. Company, if authorized, will take the place of the service which is presently being rendered by these carriers, referred to?

A. Yes.

Q. Although you do not even know the names of those carriers at the present time, do you?

· A. No, sir; I do not recall that. I believe there is one, buf I

am not certain of the name; I don't recall the name.

Q. Did you make any investigation into the kind, quality, or character of the service that they are rendering you, prior to the

filing of this application?

A. Well, the service that it is rending us—I believe it is just one company; I think I am correct in that—covers just a short haul on a branch where there is very infrequent service.

Q. That may be, Witness. We will develop that later, but my

question to you is: Did you make an investigation-

A. No.

Q. Into the character, kind, quality or nature of the service that is being presently rendered you there?

A. No. sir.

Q. So that you have no present knowledge of the kind of service that is being rendered you there?

A. That is correct.

156 Q. You did not set up the schedules that are involved in the exhibits—or contained in the exhibits that have been presented in this case here, did you?

A. No.

Q. That matter was all handled by the other witness, Mr. Christie; is that correct?

A. Why, I would assume so; yes, sir. I believe I heard Mr. Christie so testify.

Mr. CLARDY., That is all.

Mr. Des Roches. I have just a few questions, please.

By Mr. DES ROCHES:

Q. Mr. Symes, The Willett Company is incorporated under the laws of what state?

A. Indiana.

Q. Indiana?

A. Yes, sir.

Q. What is the capitalization of the company?

A. I do not recall offhand just what the capitalization of the company is.

Q. The stock of the company is all owned by—what is the correct name of that company again?

A. American Contract & Trust.

Q. American Contract & Trust Company?

A. Yes, sir.

Q. Of Philadelphia?

A. Yes.

157. Q. Are you also an officer of that company?

A. No.

Q. How many directors has The Willett Company?

A. Six, I believe it is.

Q. Do all of the directors of that company

A. Or rather-pardon me-it is seven, I should say.

Q. Seven directors.

A. Yes.

Q. And do all of the directors of that company occupy positions of trust with The Pennsylvania Railroad Company?

A. All but one of them, who is not directly connected with The Pennsylvania Railroad.

Q. Is he indirectly connected with it?

A. Yes.

Q. Who are the officers of The Willett Company?

A. George G. Young, president.

Q. Is he connected, also, with The Pennsylvania Railroad Company?

A. Well, now, I do not believe that be he; no, sir. As a matter of fact, I know he is not.

Q. All right. Continue. Who are the other officers?

A. J. P. McArdle.

Mr. HARRY YOCKEY. Do you mean directors?

Mr. DES ROCHES. Pardon me?

Mr. HARRY YOCKEY. You referred in your question to other officers. Are you talking about the directors?

Mr. Des Roches. I am asking the witness now about the officers.

Mr. HARRY YOCKEY. All right.

A. J. P. McArdle is vice president and general manager.

By Mr. DES ROCHES:

Q. Who is the secretary?

A. D. B. Young is secretary.

Q. Who is treasurer?

A. W. M. Whitney.

Q. How many employees has The Willett Company?

A. I chanot answer that question.

Q. Are those employees on the pay roll of The Willett Company, or on the pay roll of The Pennsylvania Railroad Company?

A. They are on the pay roll of The Willett Company of Indiana.

Q. How are they paid?

A. Well, now, I believe—well, I think Mr. McArdle will have to answer that question for you.

Q. You do not know?

A. No.

Mr. HARRY YOCKEY. If I may interrupt, your Honor, I might just say here for the benefit of counsel that Mr. McArdle will go into all of these details a little later on, when he is on the witness stand here.

Mr. DES ROCHES. He will be on the stand, will he?

Mr. HARRY YOCKEY. Yes.

159 Mr. DES ROCHES. All right.

Mr. HARRY YOCKEY. And the records will be available, regarding all of those details.

Mr. Des Roches. Very well.

Mr. HARRY YOCKEY. As to equipment, personnel, and so forth.

Mr. Des Roches. All right. I just have one further question, then, I believe.

By Mr. Des Roches:

Q. Mr. Symes, do you have a copy of the contract here, between The Willett Company and The Pennsylvania Railroad Company?

A. Mr. McArdle has a copy of it.

Q. He has that also?

A. Yes, sir.

Mr. HARRY YOCKEY. Were you asking me?

Mr. Des Roches. I was asking both of you.

Mr. HARRY YOCKEY. Yes, he has it; we have a copy.
Mr. Des Roches. All right. That is all.

Mr. CLARDY. Say, how do you pronounce that name, anyway; WILLett, or WilLETT?

Mr. HARRY YOCKEY. WILLett.

Mr. Moberty. I have about two questions, your Honor.

By Mr. MOBERLY:

Q. Mr. Symes, does The Pennsylvania Railroad assume any operating deficit, if the same occurs, of The Willett Company?

160 A. Assume any operating deficit, did you say?
Q. Yes, sir.

A. It has not.

Q. It does not or it has not?

A. Well, it has not.

Q. What control over the finances of The Willett Company does. The Pennsylvania Railroad Company exercise, if any?

Mr. HARRY YOCKEY. Well, now, just a moment. Let me hear that question again, please, Mr. Reporter.

(Question read.)

Mr. HARRY YOCKEY. I object to the question, your Honor. There is no evidence in this record that it does control them.

Mr. Moberly. I am merely asking him the question.

Mr. HARRY YOCKEY, If you want to ask him the question, all right, but your pending question assumes that they do have. You are asking him what control they have.

Mr. Eggens. Well, to save time, supposing you reframe the

question.

Mr/MOBERLY. All right.

Mr EGGERS. We will sustain the objection.

Mr. Des Roches. It is a subsidiary.

By Mr. MOBERLY:

Q. Does The Pennsylvania Railroad Company exercise any control over the finances of The Willett Company?

A. It has not. Those matters are handled by The Willett Com-

pany of Indiana.

Q. Do you mean by your answer, Mr. Symes, that The Pennsylvania Railroad Company has not exercised any control over the finances of The Willett Company of Indiana?

A. Yes, sir; that is correct, to the best of my knowledge.

Q. Well, where do the earnings and the profits, if any, of The Willett Company of Indiana go?

A. Well, the earnings, of course, go to make up the operating expenses; and if there be a profit, it is handled through a dividend.

Q. To whom!

A. The owner of the stock.

Q. The American Contract & Trust Company?

A. Yes, sir.

Q. And that goes directly to The Pennsylvania Railroad; does it not?

A. I presume it does.

Q. During the time during which The Willett Company has been in existence, has it ever been operated at a loss?

A. I cannot answer, for all the time it has been in existence, and I can only answer for the three years that I have been associated with it, that I have been on the board of directors.

Q. All right.

A. For that period, it has not.

Q. If it were to be operated at a loss, is there any provision whereby the Pennsylvania Railroad would make up the deficit?

162 A. There is none that I know of.

Q. Well, have you ever investigated that matter?

A. No.

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Q. If there would be a loss to The Willett Company of Indiana, that loss would flow directly to The Pennsylvania Railroad; would it not?

Mr. HARRY YOCKEY. Now, just a moment. I want to object to that question—you had finished the question, had you not?

Mr. MODERLY. Yes.

Mr. HARRY YOCKEY. I want to object. I think that subject matter has now been gone into far enough. These are questions that have no bearing whatever on any issue in this case. The witness has already testified as to the control, that one company is a subsidiary of the other one, and the other one is a subsidiary of the other one; and any question as to how the money flows in case of a loss has no bearing here. The witness has testified that nothing of the sort, that counsel is hinting at, has happened, in his experience

Mr. Eggers. Sustained.

Mr. Moberly. That is all.

By Mr. CLARDY:

Q. Well, Witness, if the operations of The Willett Company, on the rates which you pay that company, should prove so unprofitable that The Willett Company could not continue operations, do

you want us to understand that the parent company would not supply the deficiency, so as to keep the operations going?

Mr. Harry Yockey. Well, now, just a moment. I want to object to that question also, if the Board please, because he is raising a question now that is not involved here, and that is contrary to what the testimony shows. The testimony shows that it always has been a profitable operation as far as the witness knows. The witness himself is not connected with the American Contract & Trust Company, and counsel is getting into an involved situation here, now, where something might go from one company to the other.

Mr. Eggers. If he knows, he may testify..

Mr. CLARDY. Surely.

The WITNESS. State the question again.

Mr. CLARDY. Read it, please.

(Question read.)

A, Well, I would assume under those conditions, that the vice president and general manager of The Willett Company of Indiana, would request an increase in rates.

By Mr. CLARDY:

Q. And if necessary the advance of sufficient funds to keep the company running; is that correct?

A. Well, now-

Mr. HARRY YOCKEY. Well-

A. Well, I told you that I did not think it would be necessary to do that.

By Mr. CLARDY:

Q. Well, Witness, do you not as a matter of fact, in negotiating the rates between the two of you, attempt to fix them solely on the basis of just how much it will take to keep the trucking company running?

A. We figure that they should earn cost plus a reasonable profit, that they are entitled to cost plus a reasonable profit for the operation of the service that we request of them; the same as we would in

the case of any other company.

Q. Knowing that any profit that accrues will flow right back into the same coffers?

A. No.

Q. How?

A. Not knowing that at all; no, sir. Just as a company; I say.

Q. But you do know that it will go back there, if there is a profit; do you not?

A. If there is a profit.

Q. Surely.

A. Yes.

Q. And if there is a loss, if it goes the other way, you know where the money is coming from; do you not?

Mr. HARRY YOCKEY. Now, just a moment. That is the same

question, and I object to it.

Mr. CLARDY. I think it is important for two reasons, your Honor; one, to demonstrate that there is not even a Dr. Jekyll-Mr. Hyde

set-up here, but it is one and the same all the time—Mr. Eggens. Mr. Clardy, I think the record is clear.

Mr. HARRY YOCKEY. I think so.

Mr. CLARDY. Well, I am glad to hear that statement.

Mr. Eggers. Is there any further cross-examination!

Mr. CLARDY. Not now.

Mr. Eggers. Mr. Yockey, have you any further questions!

Mr. HARRY YOCKEY. No; I think that will be all.

Mr. CLARDY. He will not have to come back tomorrow.

The WITNESS. I hope not.

Mr. Eggers. You are excused.

(Witness excused.)

Mr. EGGERS. Call the next witness.

Mr. HARRY YOCKEY. Mr. McArdle.

J. P. McARDLE was sworn and testified as follows:

Direct examination by Mr. HARRY YOCKEY:

Q. You may state your full name.

A. J. P. McArdle.

Q. Where do you live!

A. Chicago.

Q. In what capacity are you connected with The Willett Company of Indiana, Inc., the applicant herein?

A. Vice president and manager.

Q. How long have you been vice president and manager?

A. Since May 1936.

Q. Were you connected with the applicant before that?

A. Yes.

Q. How long?

A. Since December 1, 1935.

Q. What is the correct name of the applicant? Is it The Willett Company of Indiana, Inc.?

A. Yes, sir.

Q. As vice president of the company, are you acquainted with its corporate and business affairs?

A. Yes.

Q. It is a corporation?

A. Yes, sir.

Q. Organized under the laws of what state?

167 A. Indiana.

Q. When?

A. May 7th, 1934.

Q. Where is its principal legal office and place of business?

A. 1250 Consolidated, Building, Indianapolis.

Q. Does it have an operating office?

A. Yes,

Q. Where is that? '

A. 323 West Polk Street, Chicago.

Q. And is it actually operated at that address in Chicago?

A. It is.

Q. In what business is the applicant engaged?

A. Common carrier by motor truck.

Q. What type of merchandise does it handle, as to being commodities generally, or otherwise!

A. Commodities generally.*

Q. Does it haul for any other person than The Pennsylvania Railroad Company?

A. No.

Q. Does it propose to haul for anybody but The Pennsylvania Railroad Company over these seven routes?

A. No.

Mr. Clardy. Just a moment. To which I am going to object, and I move that the answer be stricken out. The answer came before I had an opportunity to interpose by objection.

The application which is here before us is for a common carrier certificate, and no such self-imposed limitation

means anything in the proof of public convenience and necessity.

I ask, therefore, that the answer be stricken.

Mr. Yockey. In every one of these cases, in every one of the certificates that The Willett Company has, the Commission upon our evidence of this type, has imposed a restriction to the effect that all of the freight is the freight of The Pennsylvania Railroad Company, and that we must confine ourselves to that, and it describes the service, or the freight, as being transported on the freight bills, and bills of lading of The Pennsylvania Railroad; and that is what they have limited us to, and that is the type of service that we are asking for in this case, and that is the question that I am asking.

Mr. EGGERS. All right. Just a moment, now, gentlemen. The

objection is overruled.

By Mr. HARRY YOCKEY:

Q. Do you have the question in mind?

A. I answered it.

Mr. HARRY YOCKEY. That is right.

By Mr. HARRY YOCKEY:

Q. Well, now then, is all of the movement by motor vehicle as far as the applicant is concerned!

A. Yes.

Q. And the operations that are involved here, that you are testifying about, are interstate operations, are they!

A. Yes.

Q. Does the applicant now haul, or does it propose to haul, any passengers?

A. No. sir.

Q. How long has the applicant been engaged as a common carrier in interstate commerce of commodities generally!

A. Since May 1934.

Q. You understand, I take it, Mr. McArdle, that intrastate shipments are not involved in this hearing.

A. Right.

Q. And in all of your testimony you will exclude any reference

to intrastate shipments.

A. Have you secured authority from the Interstate Commerce Commission for operations over the 25 routes that have been referred to here?

A. Yes.

Q. I will now hand you applicant's exhibit No. 3 in this case, and I will ask you if this exhibit contains a correct description of the numbers assigned by the Interstate Commerce Commission to your various applications, and as reflected in your certificates?

A. Yes, sir; so far as the first seven groups are concerned, in the first part of the sheet; and so far as this application is concerned, in the last group.

Q. Well, now, then, taking for instance the first group set forth on the exhibit, those routes are designated as "Routes

170 covered by grandfather application MC 2815."

A. Yes.

Q. Are you operating all of those routes?

A. Yes.

Q. The next group of routes is designated as "Routes covered by application MC 2815 BMC 10."

A. Yes.

Mr. Eggers. If I may interrupt, Mr. Yockey, for a moment.

Mr. HARRY YOCKEY. Yes.

Mr. Eggers. I think you went over this exhibit in some detail with the preceding witness, did you not?

Mr. HARRY YOCKEY. I believe I did, yes, sir, your Honor. I

can ask this witness one question.

Mr. EGGERS. Yes. Will you do that. Those do not have much to do with this particular application.

Mr. HARRY YOCKEY. All right, your Honor.

By Mr. HARRY YOCKEY:

Q. Mr. McArdle, are you operating all of these particular routes as described under their respective MC numbers, as indicated in the exhibit, with the exception of Sub 6?

A. Yes.

Q. And are the routes covered, by the last group, designated as the proposed routes, covered by application MC 2815, Sub 6, the routes you are seeking authority for in this application?

A. Yes.

171 Q. As vice president and manager of the applicant, what are your duties and responsibilities?

A. I have general supervision over the entire operation; the personnel, the equipment, the books of the company, the maintenance of offices, the preparation of applications, testifying before commissions, representing the company, and any and all matters pertaining to the operations of the company.

Q. Are you acquainted, then, with the operations of the com-

pany?

A. I am.

Q. As manager and vice president?

A. Yes, sir.

Q. What has been your experience in the trucking industry?

A. I have been in the trucking industry more than 20 years.

Q. Now, does the applicant propose to operate over regular routes?

A. Yes.

Mr. HARRY YOCKEY. Mr. Reporter, applicant's exhibit No. 7 for identification, please.

(Exhibit 7, Witness McArdle, marked for identification.).

By Mr. HARRY YOCKEY;

Q. Mr. McArdle, I hand you applicant's exhibit No. 7 for identification, and ask you to state who prepared that.

A. I did.

Q. What does that exhibit purport to cover?

A. The exhibit covers our description of the proposed

172 routes, involved in the present application.

Q. Now, Mr. McArdle, will you refer to applicant's exhibit No. 2 in this case, which is the map which has been he etofore introduced in evidence here. Do you have that before you?

A. Yes, sir,

Q. Does that exhibit cover the same routes that are set forth in red on the map?

A. Yes.

By Mr. EGGERS:

Q. That is, exhibit 2.

A. Yes.

By Mr. HABRY YOCKEY:

Q. My question was, does exhibit No. 7 for identification cover the same routes that are set forth in red on exhibit No. 2!

A. Yes.

Q. But does it cover minutely the exact highways over which the applicant desires to operate these particular routes?

A. Exhibit 2?

Q. Yes.

A. No, sir.

Q. Now, what does your exhibit No. 7 for identification purport to do?

A. Exhibit No. 7 definitely describes minutely the routes which are to be followed.

Q. Over all of these routes?

A. Yes, sir.

173 Q. Those are the routes set forth in exhibit No. 7 for identification.

A. Yes.

Q. And it describes here the manner in which you desire to operate under this instant application, if a certificate is granted; is that correct?

A. Yes, sir.

Mr. HARRY YOCKEY. If the Board please, we offer applicant's exhibit No. 7 for identification in evidence.

Mr. EGGERS, Is there any objection?

Mr. CLARDY. No objection.

Mr. BARKELL Mr. Yockey, does your exhibit No. 7 for identification correspond to your application?

Mr. HARRY YOCKEY. Yes, it does, with one or two exceptions where there has been a change in the numbers of the highways.

Mr. Barkell. I have a notation of corrections that were made, or that should be made, in the original application. Now, as to whether or not they have been covered in this exhibit, I do not know.

Mr. HARRY YOCKEY. Well, let me ask Mr. McArdle about that.

By HARRY YOCKEY:

Q. Mr. McArdle, in your exhibit No. 7 for identification here, is the exact highway designation, as far as highway numbers are concerned, the same in this exhibit as it is in the description contained in the application?

A. With the exception in the changes that have been referred to, where changes have been made in the designation of various highways in the state of Michigan since

the time the survey was made; yes, sir.

Q. In other words, since the time the original application was made, you have found that there are some highways which, as far as the numbering system is concerned, have been changed?

A. Yese

Q. Some of those have been changed, and you did not know it; is that correct!

A. Well, they had been changed subsequent to the time that we made the survey of these routes, and logged it.

Q. But aside from that, the routes are exactly as described in the application, with that minor exception; is that correct!

Ar Yes, sir.

By Mr. BARKELL:

Q. What I wanted to be sure about was this, Mr. McArdle: you have some documents attached to your application. You are sure, now, that you have them all corrected, are you?

A. Reasonably sure; ves, sir.

Q. Well, then, I wonder if it is necessary to go over them again, to find out whether those changes have been made, or not?

A. I think it is all right in there now.

Mr. BARKELL. Well, now, let us see a moment.

Mr. HARRY YOCKEY. If your Honor please, may we go off the record on this for just a moment, please!

175 Mr. BARKELL Yes.

(Discussion outside the record.)

Mr. BARKELL. Now back on the record. Have the corrections been indicated?

Mr. Munshaw. Yes.

Mr. CLARDY. It is nothing more than a correction in the description, as I understand it.

Mr. HARRY YOCKEY. That is all.

Mr. CLARDY. In other words, you do not change the actual high-

Mr. HARRY YOCKEY. No.

Mr. CLARDY. But there is a difference in the numbering.

Mr. HARRY YOCKEY. Yes.

Mr. CLARDY. If you had different highways I would object.

Mr. HARRY YOCKEY. Well, there is no difference in the high-ways. The designated numbers only have been changed.

Mr. EGGERS. Is there any objection to applicant's exhibit No. 7? (No response,) There being no objection, applicant's exhibit No. 7 will be accepted, and considered as read in evidence.

(Exhibit No. 7, Witness McArdle, received in evidence.)

By Mr. HARRY YOCKEY:

Q. Well, now then, Mr. McArdle, without going into it too minutely, has the applicant received certificates covering all of the 25 routes that are set forth in applicant's exhibit No. 1

here?

6 A. Yes, sir.

Q. That is, from the Interstate Commerce Commission?

A. Yes.

Q. And has the applicant also received state authority from these various states through which it operates over these 25 routes?

- A. Authority has been received from every state with the exception of Ohio, and an application has been filed for several months there, but we have heard nothing from it.

Mr. Anderson. May I interrupt, if your Honor please, to say that the routes actually number 26, although they have been referring to them as 25 in number.

Mr. HARRY YOCKEY. Off the record-

Exam. Harrison. No, on the record.

Mr. HARRY YOCKEY. All right. I will say that there are two of them that have been duplicated. One of them, one of the applications, covered mail and express only, under the grandfather, not the interim application; and then later on we were given full authority. That is what that is.

Mr. EGGERS. All right.

By Mr. HARRY YOCKEY:

Q. Now, Mr. McArdle, the application that was prepared and filed, the original application: by whom was that prepared?

A. By me.

Q. Who actually signed the application!

A. The president, George Young.

Q. The president of the applicant.

A. Yes, sir.

Q. Has there since been an amendment to the application—A. Yes.

Q. Filed with the Interstate Commerce Commission?

A. Yes, sir.

A. And the amendment covered one route, adding a short route to the original application, from Lake City to Manton, Michigan; is that correct!

A. Yes, sir.

Q. Why was that not included in the original application, if you know?

A. In drawing the original application, that portion of the route was omitted inadvertently, and it was discovered after the application had been filed; so we immediately proceeded to have the application amended, to include that.

Mr. HARRY, YOCKEY, Mr. Reporter, applicant's exhibit No. 8

for identification.

(Exhibit No. 8, Witness McArdle, marked for identification.)

By Mr. HARRY YOCKEY:

Q. Now, Mr. McArdle, I hand you applicant's exhibit 8 for identification, and will ask you who prepared that?

A. I did.

Q. What does that exhibit purport to show?

178 A. It shows the mileage by truck over the log-or, rather,

I mean to say, over the route, as logged by me, between Fort Wayne, Indiana and Kalamazoo, Michigan; Grand Rapids and Kalamazoo, Michigan; Grand Rapids and Cadillac; Cadillac and Traverse City—

Mr. EGGERS. Just a moment, Mr. McArdle. You will not have 'to go through all of them.

The WITNESS. All right.

By Mr. HARRY YOCKEY:

Q. Does that cover all seven routes?

A. Yes.

Q. In one column you have the truck mileage, that the truck shipments will travel over each of those routes; is that correct?

A. Yes, sir.

Q. And in the other column, you show the actual railroad mileage covering the same routes?

A. Yes.

Q. And you propose, if granted authority here, to operate over the mileage as set forth in the column denominated "Truck mileage," do you?

A. Yes, sir.

Q. And that covers each and all of the routes set forth in the application; is that correct?

A. Yes, sir.

Mr. HARRY YOCKEY. We offer applicant's exhibit No. 8 for identification, in evidence.

Mr. Anderson. No objection.

Mr. Eggers, Is there any objection?

Mr. CLARDY. I have no objection.

Mr. Eggers. There being no objection, applicant's exhibit No. 8 will be accepted and considered as being read in evidence.

(Exhibit 8, Witness McArdle, received in evidence.)

By Mr. HARRY YOCKEY:

Q. Now, Mr. McArdle, I will ask you to refer to the application that has been filed in this particular case. Do you have a copy of the application before you?

A. Yes, sir.

Q. Have you set forth therein the names of the directors of The. . Willett Company?

A. Yes, sir.

Q. Is that a correct list?

A. It is.

Q. Are those gentlemen directors of The Willett Company at the present time?

A. Yes, sir.

Q. Now, what is the fact as to the capitalization of The Willett Company of Indiana?

A. (No answer)

Q. What is it capitalized for?

180 · A. \$300,000.

Q. What is the par value of the stock?

A. \$25.

Q. How much stock has been sold!

A. 2.800 shares.

Q. Who owns all of that 2,800 shares?

A. The American Contract & Trust Company.

Q. You have been present here, and heard Mr. Symes testify regarding who owns that stock, have you not?

A. Yes.

Q. Is that true, as far as you know?

A. Yes.

Q. His testimony as to that?

A. Yes.

Q. Now, did you also hear the evidence of Mr. Christie, regarding the service?

A. Yes.

Q. Is there any difference in the service that is being rendered on the 25 routes now, and what you propose to render over the seven routes?

A. No, sir.

Q. Is it the intention of the applicant to haul for anybody except for The Pennsylvania Railroad Company!

Mr. CLARDY. The same objection.

Mr. Eggers. The same ruling—objection overruled, and exception noted.

A. What is the question again?

By Mr. HARRY YOCKEY:

· Q. Does the applicant haul at the present time for anybody except The Pennsylvania Railroad Company?

A. No.

Q. Is it the intention of the applicant to haul for anybody, except the Pennsylvania Railroad Company, over the new seven routes?

Mr. CLARDY. That is the same question.

Mr. HARRY YOCKEY. No, it is not the same question. I have changed it.

Mr. CLARDY. I still object

Mr. Eggers: Overruled.

A. No.

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By Mr. HARRY YOCKEY:

Q. Now, Mr. McArdle, is this operation that you speak of, what is commonly called and denominated as a station-to-station operation?

A. Station-to-station line-haul operation.

Q. Is it the intention of the applicant—or rather, let me ask you this: in all of the services that are being rendered at the present time by The Willett Company over the 25 routes that have been referred to, is there any of that service that is rendered on the bills of lading or freight bills of The Willett Company?

Mr. CLARDY. To which I object. Now, your Honor, I

thought we had gone all over that once before.

Mr. HARRY YOCKEY, No.

Mr. Clardy. And you sustained the objection to that, as dragging in the 25 routes. He has gotten them in a dozen times since then—

Mr. HARRY YOCKEY. Pardon me-

Mr. Eggers. Just a moment.

Mr. CLARDY. Will you let me hear that question, please, Mr. Reporter.

Question read.)

Mr. HARRY YOCKEY. We have a right to show here, if your Honor please, that this is one unified operation. That is the point that we are making. Here they are operating 25 routes, and they are going to operate seven more, and it is all the same type and kind of operation.

Mr. CLARDY. That still does not prove public convenience and

necessity.

Mr. Moberly. You mean, counsel, you hope you are going to be operating seven more routes.

Mr. Eggers. Sustained.

Mr. HARRY YOCKEY. What is the ruling?

Mr. Eggers, The objection is sustained. Mr. Harry Yockey. All right.

By Mr. HARRY YOCKEY:

Q. Well, now, in the transportation that will be involved over the new routes, the seven new routes, will any of that transportation, or traffic, move on any of the freight bills or bills of lading of The Willett Company?

A. No, sir.

- Q. On whose freight bills or bills of lading will the business move?
 - A. Those of The Pennsylvania Railroad.

Q. Under whose tariffs will it move?

A. The tariffs of The Pennsylvania Railroad.

Q. Does the applicant have any tariffs?

A. No.

Q. Does it propose to have any tariffs, as far as these interstate operations are concerned?

A. No.

Mr. HARRY YOCKEY. I am not just certain—did I ask Mr. Christie some questions about Kipp's National Substituted Freight Directory?

Mr. CLARDY. Yes.

By Mr. HARRY YOCKEY:

Q. What is the fact, Mr. McArdle, as to whether or not the applicant is listed in that directory at this particular time?

Mr. CLARDY. Well now, to be consistent, I am going to object to that, as I did when that question was asked before. I think you overruled me at that time.

Mr. HARRY YOCKEY. I think they did.

Mr. CLARDY. However, I want the record to show the

Mr. Eggens. That has been answered, has it not, Mr.

Mr. HARRY YOCKEY. Pardon me?

Mr. Eggers. I think that question has been answered.

Mr. Anderson. I think it was answered by the other witness. Mr. HARRY YOCKEY. All right. If they will stay off of that on

cross-examination, I will get away from it right now.

Mr. Des Roches. It has already been gone into.

Mr. Eggers. The objection is sustained.

Mr. HARRY YOCKEY. Well, if it has already been gone into, your Honor, I am just asking this witness to corroborate it. I think he should be permitted to corroborate the other testimony.

Mr. Eggers. It would be merely repetition.

Mr. HARRY YOCKEY. Oh, I beg your pardon, your Honor. It would not be repetition. It would be repetition, if it were exactly the same testimony from the same witness; but I am merely asking him now to corroborate the testimony of another witness.

Mr, Eggers. The Board has ruled.

Mr. HARRY YOCKEY. Will you permit him to answer?

Mr. Eggers. No; the objection is sustained, because it would be repetition.

By HARRY YOCKEY:

Q. Now, then, regarding the service over these seven new routes, Mr. McArdle: is it the intention of the applicant to be listed in Kipp's National Substituted Service Directory! I believe that is the name of it.

Mr. CLARDY. To which I object on the ground that it is neither

material nor competent here.

Mr. Eggers. Just a moment. Let me hear that question again, please, Mr. Reporter.

(Question read.)

Mr. HARRY YOCKEY. Now, if your Honor please; I do not want to be foreclosed. Under Ex Parte 129, the Commission has laid down the manner in which this shall be done, and we want to show that we are going to comply with it.

Mr. EGGERS. For the same reason that was stated a moment ago here, Mr. Yockey, I think this is objectionable. Did not your

other witness testify with regard to that?

Mr. HARRY YOCKEY. Yes: your Honor, but he testified for the railroad company, as to what the railroad was going to do. This witness now is testifying for the applicant.

Mr. Moberty. But it is all the same thing.

Mr. HARRY YOCKEY. No; it is not all the same.

Mr. Eggers, Just a moment,

Mr. CLARDY. If there is a difference-

Mr. HARRY YOCKEY. One was testifying for the railroad, and the other is testifying for the applicant.

Mr. CLARDY. That difference is not visible to my naked

186 eve.

Mr. HARRY YOCKEY. It may not be visible to yours, but it certainly is to ours.

Mr. CLARDY. Well, I hope to demonstrate it to the satisfaction

of the Commission.

Mr. Eccers. Now, just a moment, gentlemen. The objection is sustained.

Mr. HARRY YOCKEY. Sustained, your Honor!

Mr. Eggers: Yes.

Mr. HARRY YOCKEY. Well, then-

Mr. CLARBY What do you say now!

Mr. HARRY YOCKEY. At least, I will keep you from cross ex-

Mr. Eggers. Let us proceed, gentlemen.

By Mr. HARRY YOCKEY:

Q. Now, Mr. McArdle, will the applicant receive any compensation from anybody, excepting The Pennsylvania Railroad, for this service in Michigan?

Mr. CLARDY. Just a moment, please. My attention was distracted, and I did not hear that question; will you read it, please?

(Question read.)

Mr. Clardy. If he will incorporate the word "directly" in there, I will not object. Otherwise, I will, because it calls for a conclusion.

Mr. HARRY YOCKEY I submit, your Honor, that is a matter of cross-examination.

Mr. Eggers. Overruled.

A. It will not.

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By Mr. HARRY YOCKEY:

Q. Well, does it receive at the present time, in any of its operations, any compensation from anybody except The Pennsylvania Railroad?

Mr. CLARDY. Now, to which I object. If we are going to have to try these 25 routes again, we were not noticed of that.

Mr. Eggers., The objection is overruled. Let the witness answer the question.

A. No, we do not.

Mr. HARRY YOCKEY, Just a moment, please.

Mr. CLARDY. Is counsel through...

Mr. HARRY YOCKEY. By no means. Mr. Reporter, applicant's exhibits Nos. 9 and 10 for identification, please.

(Exhibits 9 and 10, Witness McArdle, marked for identifica-

tion.)

By Mr. HARRY YOCKEY:

Q. Now, Mr. McArdle, I will hand you applicant's exhibits Nos, 9 and 10 for identification, and ask you if they contain a correct list, or are a correct list of the tractors and trailers of the applicant?

A. Yes

Q. Is that company-owned-equipment?

Q. Does the company lease any of its equipment?

188 A. No.

Mr. HARRY YOCKEY. We offer applicant's exhibits Nos. 9 and 10 for identification, in evidence.

Mr. Anderson. I have no objection.

Mr. EGGERS. Is there any objection? (No response.) There being no objection, applicant's exhibits Nos. 9 and 10 will be accepted and considered as read in evidence.

(Exhibits 9 and 10, Witness McArdle, received in evidence.)

By Mr. HARRY YOCKEY:

Q. Now, Mr. McArdle, how many tractors and trailers do you desire to put into operation over the seven new routes, if a certificate is granted here?

A. There will be a total of twelve tractors and twelve trailers

put into operation over these routes.

Q. And how many of those units will be in operation directly, and how many of them will be in reserve, if any?

A. There will be ten that will be in direct operation, daily oper-

ation, and two will be reserved.

Q. Do you at the present time have and own those particular twelve units!

A. Yes, sir.

Q. Meaning by "you," the applicant.

A. Yes.

Q. And are they listed in applicant's exhibits Nos. 9 and 10 here!

A. Yes.

189 · Q. Now, how many tractors-

Exam. Harrison. Just a moment, please, Mr. Yockey. When you refer to a unit, do you mean a tractor and trailer?

Mr. HARRY YOCKEY. Let me ask the witness.

By Mr. HARRY YOCKEY:

Q. By your answer, Mr. McArdle, you mean twelve tractors and twelve trailers, do you not?

A. Yes.

Q. Or rather, twelve semitrailers.

A. Yes.

Q. Or twelve complete units.

A. Yes, sir.

By Mr. BARKELL:

Q. Is any of this equipment being used in operations over other routes?

A. Now?

Q. Yes.

A. No, sir, it is not—well, just a moment, now. Do you mean, that is in this list?

Q. Yes.

Mr. EGGERS. Exhibits 9 and 10.

By Mr. BARKELL:

Q. Yes, the twelve tractors and trailers that you are say going to be used in this operation.

A. No.

By Mr. EGGERS:

Q. An they just standing idle now !

A. Yes.

By Mr. CLARDY:

Q. You bought them in anticipation, then, of getting this authority, I gather?

A. Yes.

Mr. HARRY YOCKEY. That is right.

Mr. Eggers. All right. Proceed.

By Mr. HARRY YOCKEY:

Q. Now, Mr. McArdle, how many tractors and how many trailers are listed in these two exhibits?

A. 43 trailers and 41 tractors.

Q. How many employees does The Willett Company have at this time?

A. 78.

Q: And how many additional employees, if any, will be added to that list in the event that this certificate is granted?

A. 11.,

Q. And what will they consist of; that is, what type of employees?

A. Primarily road drivers. -

Q. Now, all of these employees whom you have spoken of as being in the employ of The Willett Company at the present time: whose employees are they!

A. Willett Company of Indiana.

Q. And will the 11 new employees who you say will be added, also be employees of The Willett Company of Indiana?

A. Yes, sir.

Q. Who pays and who will pay the salaries of those employees!

A. The Willett Company of Indiana.

Q. Who has the direction and control of the service of each and all of those employees, at the present time employed, or to be employed?

A. I have. -

Q. That is, The Willett Company ?

A. The Willett Company of Indiana; yes, sir.

Q. Are any of the employees whom you have enumerated, who are employed at the present time, or the ones who are going to be employed, in the employ of The Pennsylvania Railroad?

A. No.

Q. Now, you have testified regarding the control and direction of the employees of The Willett Company, by The Willett Company.

A. Yes.

Q. Is that same thing true of all of the operations of The Willet Company?

A. Yes.

Q. And will that same thing continue to be true of all of the operations of The Willett Company, in the event that a certificate is granted here covering the seven new routes!

A. Yes:

Mr. CLARDY. Would that be true how is that again?

Mr. HARRY YOCKEY. Pardon me?

Mr. CLARDY. I did not eatch that.

Mr. HARRY YOCKEY. I asked the witness if that same thing would be true of all of the operations of The Willett Company over the seven new routes.

92 Mr. CLARDY. I mean, I do not catch what you mean.

Mr. HARRY YOCKEY. The question is directed to showing that there is no control or direction by anybody except The Willett Company.

Mr. ANDERSON. Of the employees

Mr. HARRY YOCKEY. Yes:

Mr. CLARDY. All right.

Mr. Eggers. Now, just a moment, gentlemen. Let us not get too much of this discussion between counsel into the record. There has been a question asked.

Mr. HARRY YOCKEY. I think the witness answered the question.

Mr. BARKELL. Yes.

Mr. EGGERS. The question has been answered. Let us go ahead. Mr. HARRY YOCKEY, Mr. Reporter, applicant's exhibit No. 11 for identification.

(Exhibit 11, Witness McArdle, marked for identification.)

By Mr. HARRY YOCKEY:

- Q. Now, Mr. McArdle, what is the fact as to whether or not the applicant company carries the types of insurance as required by the rules and regulations of the Interstate Commerce Commission?
 - A. It does; yes, sir-to the best of our knowledge.

Q. It does have insurance?

A. (Nodding head "Yes.")

Mr. Eggers. Answer out loud, Mr. McArdle.

By Mr. HARRY YOCKEY:

Q. I say, it does have insurance and an anatom anatom and an anatom anatom and an anatom and an anatom anatom anatom and an anatom anatom anatom and an anatom anat

I thought I answered that—yes.

Q. Have you listed that in an exhibit ?

A. Yes.

Q. I now hand you applicant's exhibit No. 11 for identification. Is that a list of the insurance which is carried by the applicant company at this particular time?

A. Yes, sir, it is. This is the insurance that is on file with the Interstate Commerce Commission, and also in the several states

in which we operate.

Q. As indicated on the exhibit.

A. Yes, sir.

Q. And this exhibit is a correct and true delineation of those items, is it?

A. Yes, sir.

Q. Showing the various states, and the various commissions where the insurance is on file?

A. Yes.

By Mr. BARKELL!

Q. Mr. McArdle, let me ask you right there: does not the application show that seven units are to be used in this operation?

A. It was stated that way originally in the application, that is true, yes, sir. However, subsequently, in going over the mat-

ter, we determined that better schedules could be worked up,
194 to better expedite the movement, so we decided at that time
to change it to 10 units, and for that reason we have planned

and set our schedules up on the basis of 10 units.

Mr. HARRY YOCKEY. Did your Honor have another question?

Mr. BARKELL. No.

Mr. HARRY YOCKEY. We offer applicant's exhibit No. 11 for identification, in evidence.

Mr. Eggers. Is there any objection?

Mr. CLARDY. I do not want to object to the exhibit, your Honor, but may I point out on the record that everything except the first line, dealing with the Interstate Commerce Commission, is immaterial to the issue here.

Mr. Anderson. That is correct.

Mr. HARRY YOCKEY. It only goes to show that the applicant-well, does the Board want to hear from me on it?

Mr. Eggers. No. Applicant's exhibit No. 11 will be accepted and considered as read in evidence.

(Exhibit 11, Witness McArdle, received in evidence.)

By Mr. HARRY YOCKEY:

- Q. Now, Mr. McArdle, are you acquainted with the motor carrier regulations of the Interstate Commerce Commission, as far as safety regulations are concerned?
 - A. Yes.
- Q. And have you instructed your employees regarding those regulations?
 - A. Yes, sir.
- 195 Q. How?

A. By furnishing each and every employee with a copy of the Safety Regulations, as released by the Interstate Commerce Commission, through the superintendent of documents at Washington.

Q. Is your equipment equipped in accordance with the requirements for parts and accessories necessary to safe operation, as defined in part 2 of the Motor Carrier Act?

A. It is to the best of our knowledge, yes, sir.

Q. Now, Mr. McArdle, there has been introduced in evidence here a proposed schedule of the routes involved herein, which has been denominated as applicant's exhibit No. 4.

A. Yes.

Q. Have you gone over that particular exhibit?

A. Yes.

Q. Is The Willett-Company prepared to follow that schedule of operations in the event that a certificate is granted the applicant herein?

A. Yes.

Exam. Harrison. Just a moment, please, Mr. Yockey. Mr. Reporter, will you go back and read the answer of the witness with respect to instructing his employees regarding the safety regulations.

(The record was read.)

Exam. HARRISON. Off the record...

196 (Discussion outside the record.)

Mr. EGGERS. Back on the record, now.

. Mr. HARRY YOCKEY. Did your Honor have any further questions?

Exam. HARRISON. No.

Mr. Harry Yockey. Mr. Reporter, applicant's exhibit No. 12 for identification.

(Exhibit 12, Witness McARDLE, marked for identification.)

By Mr. HARRY YOCKEY:

Q. Mr. McArole, I hand you applicant's exhibit No. 12 for identification, and will ask you to state what that is.

A. This exhibit No. 12 for identification shows the general balance sheet, income statement, and surplus account, for the years 1939, 1940, and 1941.

Q. Of The Willett Company. of Indiana, Incorporated?

A. Yes.

Mr. HARRY YOCKEY. We offer applicant's exhibit No. 12 for identification, in evidence.

Mr. EGGERS. Is there any objection?

Mr. CLARDY. Your Honor, will you withhold your ruling on this exhibit until we have had an opportunity to cross examine?

Mr. EGGERS. Very well. There will be no ruling on the offer in evidence of applicant's exhibit No. 12 at this time.

Mr. HARRY YOCKEY. That is agreeable.

Mr. EGGERS. Is there anything further on direct?

197 Mr. HARRY YOCKEY, Yes.

By Mr. HARRY YOCKEY:

Q. Now, Mr. McArdle, has the appplicant complied with the rules and regulations of the Interstate Commerce Commission in the operation of its present 25 routes, as far as it knows?

A. Yes.

Q. And will it be the intention of the applicant to continue to comply with those rules and regulations if and when a new certificate may be granted over the seven routes?

A. Yes.

Mr. HARRY YOCKEY. Now, if the Board please, I think I am through with Mr. McArdle on direct, but may I have just two or

three minutes here to consult with my colle'gues, to be sure that nothing has been overlooked.

Mr. EGGERS. Yes, certainly. We will suspend for just a mo-

ment, gentlemen.

(A short intermission followed.)

Mr. Eggers. Is that all, Mr. Yockey?

Mr. HARRY YOCKEY. That is all we have with Mr. McArdle on direct; yes, your Honor.

Mr. Eggers, Cross examine.

Cross examination by Mr. Anderson:

Q. Mr. McArdle, let me direct your attention first to applicant's exhibit No. 3.

A. All right.

198. Q. Will you get that, and have it before you, please.

A. I have it.

Q. That is the exhibit in which you set forth your routes, and your Interstate Commerce Commission numbers of designations

A. Yes, sir.

Q. Now, you have been asked some questions about that exhibit, and I would like to ask you whether or not each of those authorities—or rather, strike that out, please. Are the authorities in each of these cases under the first six numbers, granted, and final?

A. We have certificates to cover them.

Q. All right.

A. And I presume they are final.

Q. You would presume they are final-

A. Yes.

Q. Since you have the certificates!

A. I would assume so.

Q. All right. Now, will you please state to the Joint Board and the Examiner whether or not each of those certificates contains a restriction limiting you to prior and subsequent movements by rail?

A. No.

Q. What ones do?

A. Well, now, I will have to get them out and look at them before I can answer that question.

Mr. Clardy. Keep your voice up a little bit, will you, please, Witness. We cannot hear you down here.

Mr. Anderson. He says he will have to look them up to see.

Mr. CLARDY. He said something, and I am interested in what he said. Let me hear it again, please, Mr. Reporter.

(Answer read.)

By Mr. Anderson:

Q. Can you answer the question now?

A. Certificate 2815, Sub 3-

Q. 2815, Sub 3?

A. Yes.

Q: Yes.

A. Dated June 30th, 1941, of which I hold the original certificate in my hand, form C 11.1, bearing that date: the restrictions contained therein, on page 3, are four in number.

Q. Would you mind just reading those into the records, please.

A. No. 1: the service to be performed by said carrier shall be limited to service which is auxiliary to or supplemental of rail service of The Pennsylvania Railroad Company. No. 2: said carrier shall not serve any point not a station on line of railroad. At this point let me call your attention to the fact that the Commission in its order, designated that when the railroad is mentioned, it means The Pennsylvania Raifroad.

Q. Yes, we understand that,

A. All right. No. 3: no shipment shall be transported 200 by said carrier as a common carrier by motor vehicle be-

tween any of the following points, or through, or to, or from more than one of such points, namely, Indianapolis, Terre Haute, and Chicago, Illinois. No. 4: all contractual arrangements between such carrier, the railroad and the American Contract & Trust Company, shall be reported to the Commission, and shall be subject to revision, if and as the Commission may find it to be necessary, in order that such arrangements shall be fair and equitable to the parties.

Q. Now, are those all of the restrictions that are contained in

that particular authority?

A. Well, there is also the further qualification as to the number four restriction, as follows: such further specific conditions as the Commission in future may find it necessary to impose, in order to restrict that carrier's operations to service which is auxiliary to or supplemental of rail service. That, I think, covers the description.

Mr. HARRY YOCKEY. Those are the four restrictions; yes.

Mr. ANDERSON. All right.

Mr. HARRY YOCKEY. Might I interrupt with a suggestion, your Honor?

Mr. Ecoers. Just a moment. Is it your intention to go through each of these certificates, now, Mr. McArdle?

The WITNESS. He asked me to.

Mr. Anderson. Yes.

201 Mr. Eggers. Well, do you not know, without having to refer to each certificate, Mr. McArdle, whether or not they contain the same or similar provisions?

The WITNESS. Well, I just want to be sure.

Mr. Eggers. Are you not that well acquainted with them?

The WITNESS. I am quite well acquainted with them, yes; but I just want to be very sure that I am telling the truth—

Mr. Eggers. All right.

The WITNESS. In complete detail.

Mr. Eggers. Go ahead, then.

Mr. HARRY YOCKEY. I was going to say, your Honor, I can state for Mr. Anderson just/briefly what the certificates are or what they cover—if that is the information that he wants.

Mr. Anderson. I want to know specifically, and fully, and accurately, what the restrictions are in each of these authorities.

Mr. HARRY YOCKEY. Well, if you will shorten it any, I can give

them to you, if you want me to do so.

Mr. Anderson. Well, if you will promise, Mr. Yorkey, to give us an exhibit clearly setting that forth, why, then I will have no disposition to question him on them. That is all I want to know on that particular point.

Mr. Eggers, Would that be possible?

Mr. HARRY YOCKEY. Oh, yes; it would be possible, your Honor; but I must make the observation that it seems rather strange that these men now want to go into all this detail, and they objected to my going into it.

Mr. Anderson. Not at all.

Mr. HARRY YOCKEY. Oh, yes; every time I mentioned the 25 routes, they objected.

Mr. Anderson. I think you are in error about that, Mr. Yockey.

Mr. Eggens. I think that is correct. However, the exhibit has been accepted, and undoubtedly there will be cross examination on it. If you are willing to do that, though, Mr. Yockey—

Mr. HARRY YOCKEY. Oh, yes, I am willing.

Mr. Eggers. When can you do that?"

Mr. HARRY YOCKEY. I can tell them right now what it is, if they want to know.

. Mr. Anderson. If you will submit it as an exhibit, that will be all right.

Mr. HARRY YOCKEY. All right.

Mr. Eggers. Previous to the conclusion of the hearing?

Mr. HARRY YOCKEY. Yes.

Mr. Eggers. Is that agreeable?

Mr. Anderson. That is all right.

Mr. EGGERS. All right.

Mr. CLARDY. Just so that the record will be correct, your Honor; I think that Mr. Yockey mistakenly used the plural

when he referred to "these men," because it has only been Mr. Anderson here. I have not asked a single question as

Mr. Anderson here. I have not asked a single question as yet, on any subject, of this witness; and I am not going to ask any on that subject even though you have opened it up by letting it in.

Mr. EGGERS. All right.

Mr. Anderson. You will supply that to us, then, will you, Mr. Yockey!

Mr. HARRY YOCKEY. Yes, sir. I will make a note of it right here. I will get it for you.

Mr. Anderson. Thank you.

By Mr. ANDERSON:

Q. Now, Mr. McArdle, you have answered in response to two or three questions stated differently but to the same effect, that you propose to haul only for The Pennsylvania Railroad Company. Just what do you mean by that?

A. Repeat that question, please.

Mr. Anderson. Will you read it?

'(Question read.)

The WITNESS. I don't know what you mean.

By Mr. Anderson:

Q. Well, I think I can understand your position, Mr. McArdle, because I think it is obvious. But what I mean is this: you are going to haul the freight of everybody that is offered to you, are you not?

A. No.

Q. Well, whose freight are you not going to haul? For instance, in the city of Fort Wayne, Indiana, whose freight, if it is offered to you, would you not haul; the freight of

A. The only freight that we would haul on these seven new

routes out of Fort Wayne, would be freight that would be given to us by The Pennsylvania Railroad.

Q. All right. But The Pennsylvania Railroad Company has a solicitor in Fort Wayne, has it not—or a solicitor that makes Fort Wayne?

A. I believe so.

Q. And he solicits business generally from all of the industries, businesses, and shippers there, does he not?

A. I believe so.

Q. Yes. And he would accept freight from the Bowser Tank Company, or he would accept freight from any citizen, shipper, or firm in Fort Wayne, would he not! A. Undoubtedly.

Q. And likewise The Pennsylvania Railroad would do the same thing in Kalamazoo, would it not?

A. I presume so.

Q. All right. Now, then, if the Bowser Tank & Pump Company of Fort Wayne, Indiana, was solicited, as you say they would be, and will be, by a Pennsylvania Railroad solicitor, and was asked for freight going to Kalamazoo, Michigan, and it was offered to them, they would take it, would they not?

Mr. HARRY YOCKEY. Well, now, just a moment, I want to object, if the Board please, to counsel going into any cross examination of this witness on what The Pennsylvania Railroad would or would not do. Mr. Christie is here to testify for The Pennsylvania Railroad. This gentleman is not in the employ of the railroad. He has no minute knowledge as to what those solicitors do; I did not ask him any questions along that line on direct examination.

Mr. Anderson. If your Honor please, I am getting directly, now, to The Willett Company.

Mr. EGGERS. Overruled.

Mr. HARRY YOCKLY. No, you are asking him now about The Pennsylvania Railroad Company.

Mr. Eggers. Off the record.

(Discussion outside the record.)

Mr. EGGERS. Back on the record.

By Mr. Anderson:

Q. Now, having solicited business of that kind, if it were then offered to The Willett Company by The Pennsylvania Railroad, it would be accepted, would it not?

A. Yes.

Q. And transported between Fort Wayne, Indiana, and Kalamazoo, Michigan, wholly by motor trucks

A. Probably.

Q. Well, then, Mr. McArdle, how would that service be any different than the service of XYZ Motor Express, operating between Fort Wayne and Kalamazoo?

Mr. Harry Yockey. Well, now, just a moment. I want to object to that, your Honor, as not being a part of the issues involved in this case, as to whether there is one carrier, or whether there are 50 carriers, or how other rotor carriers may operate—

Mr. Anderson, Well, now-

Mr. HARRY YOCKEY. Let me finish.

Mr. ANDERSON. Go ahead.

Mr. HARRY YOCKEY. As to how they may operate has nothing to do at all with this case,

Mr. Anderson. All right. Now then-

Mr. Eggers. Let Mr. Yockey finish.

Mr. HARRY YOCKEY. This is solely an operation of the type that has been described here, which is hauling Pennsylvania Railroad freight.

Mr. Anderson. Yes, we understand.

Mr. HARRY YOCKEY. They are not in competition with any independent operators, this company is not in competition with any independent operators at all; and the Commission has so held that it has no jurisdiction to go into the question of whether or not this railroad company shall employ private motor carriers, subsidiaries, or separate motor carriers, independent motor carriers.

Mr. Eggers: Just a moment, now, gentlemen. I would like to ask you, Mr. Yockey: what do you consider to be the real issue in this case. What are you trying to prove here?

Mr. Harry Yockey. The real issue in the case, your Honor, and the only issue in this case, is the question as to whether or not there is a need for The Pennsylvania Railroad to use this particular carrier to improve its service. It is not a new service, self-declared; it is only a service by which the railroad company is attempting to improve its service.

Mr. EGGERS. In other words, then, do I correctly understand your point to be that it is a public convenience and necessity

proposition?

Mr. HARRY YOCKEY. It is public convenience and necessity, yes; the question is as to whether or not public convenience and necessity go to their improving their service, and improving their service with this particular type and kind of carrier, and not just with anybody that may want to render the service. As to service by somebody the Commission has no jurisdiction over, as the Commission has held repeatedly, that is not in issue in this case.

Mr. CLARDY. Your Honor, may I inquire, then, if Mr. Yockey means by that, that public convenience and necessity only insofar as The Pennsylvania Railroad is concerned is the issue here!

Mr. HARRY YOCKEY. It is public convenience and necessity only insofar as the service of The Pennsylvania Railroad may be improved, within the sphere of the jurisdiction of the Interstate

Commerce Commission; and the Commission has no juris-208 diction to determine in this case as to what truck line we might use, or what the service might be; and the Commission has repeatedly so held.

Mr. Eggras. In other words

Mr. Anderson. May I say— Mr. Eggers. Just a moment.

Mr. Anderson. Pardon me.

Mr. Eggens. In other words, Mr. Yockey, if it can be proven here that The Pennsylvania Railroad Company will improve its service to the public by the granting of this application, then that alone is sufficient, and it should be granted; is that correct?

Mr. HARRY YOCKEY. Yes.

Mr. Eggens. All right.

Mr. HARRY YOCKEY. And that is your public convenience and necessity.

Mr. CLARDY. May I inquire further of Mr. Yockey, then, your Honor, if he still further takes the position that if they show by their witnesses that the railroad company can improve its service by the granting of this authority, the Commission, then, is without any latitude at all in deciding the case, but must grant the authority?

Mr. HARRY YOCKEY. No; I am not saying that they must. I say that is a question for the Commission to determine upon the evidence.

209 Mr. Eggers. All right, now, gentlemen. Let us proceed. Go ahead, Mr. Anderson.

Mr. Anderson. I was rather surprised at the statement that Mr. Yockey has just made, that it is a question of whether The Pennsylvania Railroad can improve its service, when he just got through objecting to my asking the witness about The Pennsylvania Railroad soliciting business. However, that is aside from the point. Going directly to the point of my question: I have merely asked the witness if there is any difference between the proposed service over these seven routes, and the existing service. He has talked about a difference in service, now; he has said that this is a case where it is purely a question of serving The Pennsylvania Railroad. Now, we certainly have a right to show just what the service We certainly have a right to go into the question of whom, actually, they are going to serve. We do not want this issue to be beclouded merely by reason of the fact that the traffic is going to be moved on Pennsylvania Railroad freight bills, or bills of lading, and is going to be solicited by Pennsylvania Railroad solicitors. Now, I submit, it is no different.

Mr. HARRY YOCKEY. If the Board please, may I just correct one statement that counsel made there?

Mr. EGGERS. Just a moment: Off the record.

(Discussion outside the record.)

Mr. EGGERS, Back on the record.

210 Mr. HARRY YOCKEY. Before you rule, your Honor, I would like to interpose another objection.

Mr. Eggers. Very well.

Mr. HARRY YOCKEY. I object for the further reason that there is no testimony here that there any difference between this operation of The Willett Company and any other company; that there is nothing in the record as to what the XYZ Motor Express service is, or what authority the XYZ Motor Express has; there is nothing in the record, in the way of a basis for comparison, and, even if there was something, it would still not be admissible.

Mr. Eggers. I take your question to mean, Mr. Anderson, the

ordinary run of common motor carriers.

Mr. Anderson. Yes.

Mr. Eggers. The objection is overruled.

Mr. Anderson. Answer the question.

The WITNESS. Repeat the question, please.

Mr. Anderson. We will have the Reporter read it.

(Question read.)

A. Not knowing what the so called XYZ Motor Express Company's schedules might be, I am not in a position to answer that question.

By Mr Anderson:

Q. Then, I will ask you to assume, Mr. Witness, that the XYZ
Motor Express operating between Fort Wayne, Indiana,
and Kalamazoo, Michigan, is a common carrier by motor ve-

hicle of general commodities, authorized by the Interstate Commerce Commission over the same route that you are proposing here to operate over between those points; that they solicit freight generally, just as you have testified the Pennsylvania Railroad agents will, and they take freight from all who offer it; that they have equipment of the same kind as you, and their trucks are of the same make, even, and they operate daily. Now, will you tell us what difference, if any, there would be between your proposed service and that service.

Mr. HARRY YOCKEY. Well, now, just a moment. I want to object to that question unless there is added to it the additional element that the XYZ Motor Express Company that counsel is talking about, is the same kind of an operation that The Willett Company is, hauling nothing but railroad freight for a railroad company.

Mr. Ecgers. Overruled.

Mr. Anderson. Oh, no.

Mr. EGGERS. The objection is overruled.

Mr. HARRY YOCKEY. That is the only issue here.

Mr. Anderson. No.

Mr. EGGERS. The Beard has ruled, gentlemen, and the objection is overruled. Answer the question.

By Mr. ANDERSON:

Q. The Chairman has ruled that you may answer the question, Mr. Witness.

A. The freight that is proposed to be handled on the 212 trucks of The Willett Company of Indiana, will move on bills of lading of The Pennsylvania Railroad, through the freight house of The Pennsylvania Railroad on the respective routes.

Q. And the freight of the XYZ Motor Express Company moves on the freight bills of the XYZ Motor Express Company; and that is the only difference, is it not?

A. As far as I know.

Q. All right: Now, this particular operation has also been referred to as a station-to-station operation, and you yourself said in answer to one of Mr. Yockey's questions, that it is a station-to-station linehaul operation.

A. Yes.

Q. Just what did you mean by that?

A. All of the operations that are conducted by The Willett Company of Indiana at the present time, and that are proposed to be conducted under the present application, are or will be between fixed termini, so to speak, and service all intermediate stations on The Pennsylvania Railroad, on a regular, daily schedule.

Q. All right. In other words, all that means is that you haul

the freight from point to point; that is correct, is it not?

A. It means hauling freight from a Pennsylvania Railroad freight house, to a Pennsylvania Railroad freight house.

Q. Do you mean to say that you do not do any pickup and delivery work?

213 A. Not usually, with these trucks.

Q. Well, you say "not usually," but do you do any! You do perform pickup and delivery service direct, do you not—that is, the applicant, The Willett Company!

A. Yes.

Q. Why, of course you do. And you do it every day, do you not?

A. Yes.

Q. Yes, certainly.

Mr. CLARDY. Ask him if he would in this proposed operation also.

By Mr. ANDERSON:

Q. And you would in this proposed operation, would you not? Mr. HARRY YOCKEY. Well, now, just a moment. I think, if the Board please, we are going too far into this pickup and delivery proposition. That is not involved in this case.

Mr. Anderson. We are simply trying to find out, your Honor,

the nature of the business.

Mr. HARRY YOCKEY. I know, but there is no use in going into something if it is not involved here. The decisions are that that comes under part one of the Act. Now, they have held that service for a railroad comes under part one of the Act, and the Commission has no jurisdiction, under part two, so you are just simply

wasting your time in going into that phase of the situation.

Mr. CLAROY: We desire to be heard at some length on that, if there is any doubt about it.

Mr. ANDERSON. Right.

Mr. Eggers. Just a moment, now, gentlemen. Will you go back and read the question, please, Mr. Reporter?

(Question read.)

Mr. Eggers. Will you go back and read the last three or four questions and answers, please?

(The record was read.)

Mr. BARKELL Mr. Anderson, did 1 understand your question to refer to pickup and delivery service?

Mr. ANDERSON. Yes.

Mr. Barkell. As far as this proposed operation is concerned?
Mr. Anderson. As far as the proposed operation is concerned,
yes, your Honor.

Mr. Eggers. We will hear a statement from counsel for prot-

estants, in support of their point.

Mr. CLARDY. I suggested that question, your Honor, and I will-tell you why, because if he is not allowed to go into it, you will have the same question come up with me a little later on, so I might as well state my position right here and now. The reason I want the question answered is, first of all, on the evidenciary phase, to demonstrate that this operation, taken in its entirety, is exactly paralled to and identical with that

being rendered by carriers already in the field, including

the fact that they go directly to the door of the shipper in many instances, both for pickup and delivery. That is an integral part in proving the entire case, from the standpoint of the protestants, to demonstrate that the service is identical with that which can be rendered by the protestants, or many of them; and of course that ties in with the statement which has already been made, that while the service is there, and available, the only reason that it is not being used, even though it will fill the bill 100 per cent, is because of the arbitrary position taken by the rail-road company, that it simply will not do business with anybody else, except its own child.

Mr. Eggers. But what does that have to do, Mr. Clardy, with

this application?

Mr. CLARDY. I will tell you, because pickup and delivery service at all of these points is an integral part of the service of any motor carrier; and merely because a railroad comes in here does not distinguish it from any other case that has ever been heard before.

Mr. Eggers. But you do not have to prove that in any case, do

you, Mr. Clardy ?

Mr. Clardy. Well, I should think we should. If we had any regard for the presentation of our case, we certainly would. In other words, to show that the shipper may get a door-to-door

service, is certainly an integral part, in proving public convenience and necessity, and not the fact that in a case

convenience and necessity, and not the fact that in a case in which I had no part, because if I had, this question would have been raised, the Commission may at sometime or other have said that insofar as pickup and delivery service in certain communities is concerned—not all of them, if you please, but in certain communities—for certain purposes, it does not require the issuance of a certificate by the Commission, or that it is under part one; that does not change the fact that evidence dealing with it is competent, and on cross examination it is doubly so, to demonstrate that the imposing edifice that they are putting up here about this being totally different, a totally different service, is not true.

Mr. Ecoers. All right.

Mr. Clardy. As I say, it is doubly competent on cross examination, even if it were not on direct examination.

Mr. Eccess. Now, just a moment, gentlemen.

Mr. Anderson. Year Honor, my question-

Mr. Eggers. Just a moment, plesse.

Mr. CLARDY. And incidentally, your Honor-

Mr. Eggers. Just a moment.

Mr. CLARDY. This claimed station-to-station service-

Mr. Eggers. Just a moment, please, Mr. Clardy.

Mr. CLARDY. Thank you.

Mr. Eggers. We will give Mr. Yockey an opportunity to be heard.

Mr. Harry Yockey. The law, if the Board please, in this particular situation is this—or rather, let me put it this way: this application which The Willett Company has filed here, is not for a service, including pickup and delivery service. The applicant already has the right to do that, without any application. The Commission in the Scott Brothers case, held that where service is performed, pickup and delivery service, for a railroad, if it is an exclusive service, it comes under part one of the Act, and the Commission has no jurisdiction under part two, to go into it.

Mr. EGOERS. Well, now, Mr. Yockey, let me ask you a question right there.

. Mr. HARRY YOCKEY. Pardon me, your Honor. May I proceed just a little bit further, please, until I finish my statement on this particular point?

Mr. EGGERS. All right. Go ahead.

Mr. HARRY YOCKEY. Now, in compliance with that, your Honor, the applicant is already operating; as I told you in my opening statement, it is operating a pickup and delivery service into South Bend, Indiana—or rather, Grand Rapids, Michigan; and it is also doing so in Louisville, Kentucky, and it requires no authority to do that. Now, then, I only stated that for the purpose of giving a general idea of the operation. We have not come in here

and asked for pickup and delivery service authority here; 218 ' we are not seeking that authority here. We have it. Now,

then, they want to go into that phase of it, and it is not involved here; we have not sought it, and we are not asking authority for it.

Mr. Eggers. Have you finished?

Mr. HARRY YOCKEY, Yes.

Mr. EGGERS. If you concede that public convenience and necessity is the question here involved, then would you concede that the protestants would be entitled to go into the question of pickup and delivery service?

Mr. HARRY YOCKEY. Why, no, your Honor: Public convenience and necessity of this particular type, or as to this particular operation, is involved here, yes, sir, but we do not have to get authority to perform pickup and delivery service, and the Commission does not have any jurisdiction to go into the question of pickup and delivery service under part two of the Act.

Mr. Eccens. All right.

Mr, HARRY YOCKEY. Now, then-

Mr. Eggers. Just a moment.

Mr. HARRY YOCKEY. Just because—have you had enough?

Mr. Eccens. Proceed.

Mr. HARRY YOCKEY. I do not want to talk unnecessarily here, if you have heard enough.

Mr. EGGERS. Finish your statement.

Mr. HARRY YOCKEY. I was just going to add, your Honor, that just simply because somebody else is hauling for a railroad or hauling for a carrier, or hauling for a steam-

boat, is no reason for going into that in this case. You cannot drag that into this case just because some other common carrier may want to do that. We are not in here for anything except a linehaul operation. That is all that we are seeking here.

Mr. CLARDY. Now, if I may-

Mr. EGGERS, Just a moment.

Mr. CLARDY. Before you rule, may I just point out one thing further, your Honor.

Mr. EGGERS. All right.

Mr. CLARDY. And that is this: I do not care what the Commission may or may not have decided in a thousand other cases. That was dragged in by the ears, by counsel for the applicant himself, when he asked the question "Is this going to be a station-to-station service?" Now, are we going to be denied the right to prove by their own witnesses, your Honor, that that is not the true situation? We are being denied that right if we are not allowed to cross examine on that proposition.

Mr. Eggers. Now, just a moment, please. I think we have sufficient argument on the record. The objection is overruled.

Mr. Anderson. All right. Will you answer the question? The WITNESS. You will have to give it to me again.

Mr. ANDERSON. Read it, please.

(Question read.)

220 A. Not in the operation of linehaul trucks, no, sir.

Mr. Anderson. I did not ask you anything about the operation of linehaul trucks. I move to strike the answer out. I would like to have an answer to my question.

Mr. HARRY YOCKEY. Just a moment. I do not think the Board

is listening.

Mr. Eggers. Read the answer, please.

(Answer read.)

Mr. Anderson. I did not ask him anything about that, your Honor. I asked him if he would perform pickup and delivery service in this proposed operation, and he is trying to evade my question.

The WITNESS. No. I am not.

Mr. Eggers. Can you answer the question?

The WITNESS. Well-

Mr. Anderson. And answer it yes or no.

The WITNESS. We do pickup and delivery work now in Grand Rapids.

By Mr. Anderson:

Q. And would you in the proposed operation?

A. (No answer.)

Q. You can answer that question with yes and no, and you know you can.

A. No.

Q. You would do no pickup and delivery service?

A. No.

221 By Mr. HARRY YOCKEY:

Q. You are talking about the proposed operation now!

A. Yes.

By Mr. ANDERSON:

Q. Yes, in the proposed operation.

A. Right.

Q. Then the proposed operation is not to be operated, as you told your counsel, Mr. Yockey, like the existing service over the other 25 routes, is it?

A. Yes, it is.

Q. (Continuing.) Because you do pickup and delivery service there, do you not?

A. No.

Q. For The Pennsylvania Railroad?

A. No, not in linehaul, we do not do pickup and delivery.

Mr. Anderson. Now, Mr. Witness, I did not ask you anything about that. I insist that you answer my question. You know that I did not ask you anything about linehaul.

Mr. HARRY YOCKEY. Now, just a moment. If the Board please, I object to this attitude that Mr. Anderson is taking in his cross-

examination.

Mr. Anderson. All right.

Mr. EGGERS. I think, Mr. Yockey, that some of these questions could be answered more directly by the witness. I am not ready to say yet that the witness is trying to evade any of the questions;

I am not sure that he is, and I will not accuse him of it; but I do not understand why some of these questions are not answered more directly.

By Mr. HARRY YOCKEY:

Q. Your answer was "Not in linehaul operation", was it not?

A. Yes.

Mr. HARRY YOCKEY. There you are.

Mr. EGGERS. But that was not the question.

Mr. HARRY YOCKEY. Yes, that was the very question.

Mr. Anderson. No, that was not the question at all, Mr. Yockey. The word "linehaul" was not in my question.

Mr. HARRY YOCKEY. Well-

Mr. Anderson. I did not use that word at all.

Mr. HARRY YOCKEY. All right.

Mr. Anderson. I merely asked the witness about pickup and delivery service, and I insist on an answer to my question.

Mr. HARRY YOCKEY. And he will answer you.

Mr. Anderson. Answer my question, then, Mr. Witness.

The WITNESS. Repeat the question.

Mr. Anderson. Will you read it to him, please.

(Question read.)

A. (No answer.)

By Mr. Anderson:

Q. I will ask you again, Mr. Witness: does The Willett Company of Indiana, Incorporated, as it is operating at the present time over the 25 routes in which it is engaged, or over which it is operating, do any pickup and delivery service?

A. Yes.

Q. And in the proposed operation, you would do the same; that is, you would do some pickup and delivery service wherever it was required, would you?

A. Only at those stations where there are no freight agents.

Q. How is that?

(Answer read.)

By Mr. Anderson:

Q. And where there were freight agents—that is, you mean to say, where you had an arrangement with a local man—that is, where The Willett Company had an arrangement with a local man, that you call your freight agent, he would do:it?

A. No, sir; we do not have any arrangements with local freight

agents.

Q. All right. Then, where would there be any instance where you would not do pickup and delivery service?

A. Where there is an existing pickup and delivery contractor.

Q. Oh, yes. In other words, in a city like Fort Wayne, which is so big, and has so many industries, if you did not chose to do your own pickup and delivery service, you would contract with some local cartage company to do it, would you not?

A. No.

Q. Well, then, how would you do it?

A. We would not contract with anybody to do pickup and delivery.

224 Mr. HARRY YOCKEY. Now, just a moment. Now, are you talking about The Willett Company or The Pennsylvania Railroad Company, or who? This witness is an officer of The Willett Company.

Mr. ANDERSON. And I am talking about The Willett Company

of which he is an officer.

Mr. HARRY YOCKEY. All right.

By Mr. Anderson:

Q. What is your answer?

A. I say, we would not contract with anybody to do pick-up and delivery.

Q. Then you would have The Pennsylvania Railroad do it; would you not?

A. No.

Q. Well, then, who would do it?

A. We would have nothing to do with it.

Q. Well, now, let us see. Assume that the Bowser Tank & Pump Company, of Fort Wayne, Indiana, had a big gasoline tank, which constituted half a truckload, to go to Kalamazoo, Michigan, and this proposed service had been granted, and the Pennsylvania Railroad agent had solicited the business by motortruck by way of The Willett Company, between Fort Wayne and Kalamazoo; and the Bowser Company said, "Now, we have this tank to move, and it must go to Kalamazoo, and it must be picked up here at our place", and it was offered to your line, and you took it, as you said you would, and as you are holding your-

selves out to do. Now, tell us just exactly how that would be moved.

A. It would be picked up by a local pick up and delivery truck, and brought to the freight house.

'Q. By a local pickup and delivery truck?

A. Yes.

Q. Arranged for by whom?

A. The Pennsylvania Railroad.

Q. By The Pennsylvania Railroad?

A. Yes, sir.

Q. And brought to the freight house of The Willett Company?

A. Right.

Q. Is that what you mean?

A. No, sir. Just a moment, now. It would be brought to the freight house of The Pennsylvania Railroad.

Q. To the freight house of The Pennsylvania Railroad?

A. Yes, sir.

Q. And then The Willett-Company would pick it up there?

A. Yes, sir.

Q. And take it to Kalamazoo?

A. Yes, sir.

Q. And then what would The Willett Company do with it-

A. Deliver it to the freight house.

Q. When it got it to Kalamazoo?

A. Deliver it to the freight house at Kalamazoo.

Q. And then it would be delivered from there to the consignee, would it?

A. By the railroad.

Q. By the railroad.

A. Yes.

Q. All right. Now, in any instance would that be done directly over the proposed routes, without the intervention of—or rather, strike that out. Would that be done directly by The Willett Company?

A. (No answer.)

Q. In any instance, would it ever be done direct, from the applicant to the consignee?

A. Not to my knowledge.

Q. Are you willing to say to this Joint Board and the Commission that it is not done at the present time!

Mr. HARRY Yockey. Well, now, just a moment.

Mr. Anderson. All right.

Mr. HARRY YOCKEY. I object to that.

Mr. Anderson. To save time, I will withdraw the question.

By Mr. ANDERSON:

Q. Let us take another place; let us take a movement from Grand Rapids to Fort Wayne—or between Fort Wayne and Grand Rapids—or rather, let us say, between Kendallville, Indiana, and Grand Rapids. Say you have got a movement that originates at

Grand Rapids, Michigan, and it is business that is solicited 227 by The Pennsylvania Railroad solicitor; and the solicitor tells the shipper that the shipment can move in by truck to Kendallville, and the shipper says, "All right, you may have the business, and the shipment is made, and it is carried by The

Willett Company. How would that be handled?

A. You are assuming, now, that it moves by truck from Grand

Rapids-

Q. I am assuming that the authority has been granted, and that you have the right to do all that you are seeking to do, and that you are under that authority, taking the movement originating at Grand Rapids, direct to Kendallville, Indiana. I want to know how it would be handled.

Mr. BARKELL. To clarify that question for me, Mr. Anderson, do you mean from a plant in Grand Rapids, or from the station in Grand Rapids?

Mr. Anderson. I mean from the plant of any shipper in Grand Rapids.

Mr. EGGERS. Answer the question.

A. Our own pick-up and delivery truck would pick up the freight at the place of business of the consignor at Grand Rapids, under a contract with the railroad for pick-up and delivery work, and take it to the freight house, and if the railroad so chose, if the operation was so arranged that we could operate and did operate by truck from Grand Rapids to Kendallville, it would be loaded into a roadhaul truck and handled to Kendallville, and

dropped off at the freight house of The Pennsylvania Railroad at Kendallville.

By Mr. ANDERSON:

Q. And you would so choose, if this authority was granted, because that is what you propose to do, handle less than truckload freight between those points, do you not—specifically, between Grand Rapids, Michigan, and Kendallville, Indiana?

A. Yes.

Mr. BARKELL. Now, just a moment.

By Mr. BARKELL:

Q. Supposing you were operating a full truckload at any one of these points. Would that make your operation any different?

A. Well, our arrangement with the railroad applies on the basis of less than carload freight.

Q. Well, truckload, or carload-

A. Less than carload shipments.

By Exam. HARRISON:

Q. Well, are there not shipments, though, where a less than carload shipment would be a truckload?

A. Oh, I imagine that there might be, but I have not seen one.

Q. All right. Now, you go ahead and tell us what you would do, because we are going to have the facts developed in this case, if I have to develop them myself.

A. What we are doing now, do you mean?

Q. What you are going to do, what you are proposing to do in this operation.

A. We propose to do the same thing on these new routes, 229 these seven new routes, that we are now doing on our present 25 routes. We can take any one of them that is now in operation, that you want to discuss, for the reason that we are actually doing it. For example, take Fort Wayne to Butler, Indiana, which is a comparatively short route.

Mr. HARRY YOCKEY. Well, now, just a moment. May I interrupt to suggest to Mr. Clardy that he sit down. He is disturbing

the witness.

Mr. CLARDY. I have seen no evidences of it.

Mr. HARRY YOCKEY. I think the witness should be accorded ordinary courtesy while he is testifying.

Mr. CLARDY. If I may go off the record for a moment, your

Honor, I will tell you why I am not going to sit down.

Mr. HARRY YOCKEY. Tell us on the record.

Mr. Eggers. Off the record.

(Discussion outside the record.)

Mr. Eggers. Back on the record.

By Mr. BARKELL:

Q. Mr. McArdle, I assume that it is possible for you to get a full truckload at any one of these points, that possibly would be less than a carload?

A. Yes.

Q. Now, I would like to know what that operation would be.

A. Well, if you will name a point-

Q. Take some small place, where you do not have any pick-up and delivery service.

A. Well, if you will name me the point, I will be glad to try to answer your question.

Exam. Harrison. Name a small Indiana point and a small Indiana point.

Mr. CLARDY. Do you not think, your Honor, that the witness would probably know about those places better than we do?

Exam. HARRISON. Yes, he knows, but then, the question should be specific.

Mr. CLARDY. If he does not know, he ought to know at any rate.

By Mr. BARKELL:

Q. Well, as an example, how about Lake City? That is a small town, I believe.

A. Lake City?

Q. Yes, on a spur line up in the northern part of Michigan.

A less than carload shipment that would be picked up at Lake City, that would be offered us at Lake City, that would fill a truck, that would make a truckload, would be brought to Cadillac.

Q. Where would it be picked up at Lake City?

A. At the freight house.

Q. Right at the plant, or-

A. At the freight house.

Q. How would that truckload get to the freight house in the first instance? Would the shipper bring it there?

A. Oh, they probably have a local pick-up and delivery man at Lake City, like they have in a great many places.

Q. There would be a local pick-up man who would pick it up, in perhaps any one of these larger communities, but you do not have that arrangement with anybody in the smaller communities, though, do you?

A. Who?

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Q. Willett.

A. The Willett Company of Indiana?

Q. As far as Lake City is concerned, for instance—yes.

A. Do you mean The Willett Company of Indiana?

Q. Yes.

A. We have no arrangements for pick-up and delivery; no, sir.

Q. How about the railroad?

A. Oh; the railroad, I assume, would have pick-up and delivery arrangements with thousands of carriers, in every size town in the country where it operates, even where they haul with horse and wagon.

Q. Then, If there was a full truckload of freight to go to Kendallville, Indiana-using that same illustration again-at a certain point, a local pick-up man would pick up that truckload.

A. Yes.

Q. Bring it over to the dock.

A. Yes.

Q. Unload it there.

A. Yes.

Q. And put it onto your truck.,

A. It would be loaded onto our truck, when the truck arrived; yes, sir.

Q. And then the same operation, only in reverse, would take place at the other end of the line; is that correct?

A. Yes, sir; except that in that instance, we would perform the pick-up and delivery work ourselves.

By Exam. HARRISON:

Q. Mr. McArdle, about the only service that you propose to perform-that is, that The Willett Company of Indiana proposes to perform, is from the railroad station, or the freight house of The Pennsylvania Railroad, to the freight house of The Pennsylvania Railroad at destination; is that correct?

A. Yes. sir.

Q. That is the only service that The Willett Company intends

to perform.

A. Why, when you refer to "at destination," do you mean, to a point on the railroad, or do you mean between point A and point B-just how do you mean that?

Q. Well, what do you propose to do? I am trying to find out

what you propose to do in your operation.

A. Well; we have submitted schedules here that purport to show in a broad way, the routes that are to be covered. Fort Wayne to

Kalamazoo: The freight will be picked up beginning at 9 o'clock a. m.-

Mr. BARKELL. The witness is not answering the question.

Exam. Harrison. No.

Mr. BARKELL This is just a waste of time, unless the witness answers the questions directly.

Mr. HARRY YOCKEY. If the Joint Board and the Examiner please, may I make a statement here, which I think will clarify the situation?

Exam. HARRISON, Yes.

Mr. HARRY YOCKEY. I think possibly there is a little confusion

Mr. EGGERS. Go ahead.

Mr. HARRY YOCKEY. Still referring to the questions which you have just been asking Mr. McArdle, as to what they intend to do in the pay of pick-up and delivery service: if, for instance, a less than carload shipment is turned over to The Willett Company by the railroad company, let us say, at Lake City, which is destined for one of the ordinary towns along the line of railroad that has a freight agent in it, such as practically all of them have, that freight will be delivered on the platform of the railroad. If, however, the shipment is destined to one of the small towns along the road where there is no freight agent-

Exam. HARRISON. That is what I had in mind,

Mr. HARRY YOCKEY, Or where there is no freight platform in the particular small town, then under their arrange-234 ment-or rather, under their authority they do deliver that particular shipment in a town where, as I say, there is no freight agent.

Exam, Harrison. Well, then, where there is a freight agent in the town, the operation is a direct operation between the freight house of The Pennsylvania Railroad at the origin point, and the freight house of The Pennsylvania Railroad at the destination

point; is that correct?

Mr. HARRY YOCKEY. Yes, your Honor, that is correct. Now; then, with respect to the other question that was asked of Mr. McArdle here, regarding a full truckload shipment; I think Mr. Christie can better testify regarding that, if he is asked, because he is more versed in the technique of the railroad, or the technical railroad terminology, regarding the difference between a less than carload shipment and a less than truckload shipment, and a carload shipment and a truckload shipment; and he will be glad to go into that, when we recall him to the witness stand, very thoroughly for you. Do you see what I mean?

Mr. EGGERS. Yes; and I just want to ask this question. If there is no freight agent at a particular station, or at two particular stations, say, then the operation is actually a door-to-door oper-

ation; is it not?

Mr. HARRY YOCKEY. No, your Honor, it is not. That is, it might be in a particular place, that The Pennsylvania Railroad would determine; but there are some of these nonagency stations. where they do have a pick-up and delivery man.

235 4 Mr. EGGERS. I see. All right.

Mr. HARRY YOCKEY. But there are also some of those points where they do not have.

Mr. EGGERS. All right.

By Mr. EGGERS:

Q. Now, Mr. McArdle, you have heard the statement made just now by Mr. Yockey.

A: Yes.

Q. Do you in substance adopt that as your own statement?

A. Yes, sir; that is correct.

Mr. Eggers. All right.

Mr. Anderson. Now, if the Board please, since Mr. Yockey has seen fit to testify, instead of the witness, I just want to say, since he has seen fit to put that statement into the record, that again this is just simply another attempt to obscure and becloud the situation here, because Mr. Yockey started out by referring to an instance where a shipment is offered to The Pennsylvania Railroad station agent, and I am not talking about that kind of a shipment at all.

Mr. EGGERS. You may develop further what you have in mind,

from the witness, Mr. Anderson.

Mr. Anderson. All right. However, I think I am about finlished with him, because he has testified with respect to the solicitation.

By Mr. Anderson:

Q. But the point is, Mr. McArdle, that if this certificate is granted, and you operate under the authority prayed for herein, due to the close cooperation concerning which you have testified, between The Pennsylvania Railroad and The Willett Company of Indiana, freight will be solicited at all points, or at all points where it is worth while on the proposed routes, will it not?

Mr. HARRY YOCKEY. Do you mean by that-

A. I don't know.

Mr. HARRY YOCKEY. Just a moment, please. Do you mean by that, by the railroad?

Mr. Anderson. I am sorry, but I would prefer to ask my own

question.

Mr. HARRY YOCKEY. Well; then, I object to the question, if the Board please, unless counsel specifies in his question as to who is going to solicit the freight.

Mr. Anderson. I say, freight would be solicited for this opera-

tion-

Mr. HARRY YOCKEY. By whom?

237 Mr. Anderson. At all points. That is my question.
Mr. Harry Yockey. I object.

A. I don't know.

By Mr. ANDERSON:

Q. You do not know?

A. No, sir.

Q. Do you know that it would not be?

A. No.

1 Q. You do know, and you have so testified, that The Pennsylvania Railroad would have solicitors—do you not?

A. They have solicitors; yes, sir.

Q. And you know that they solicit business for The Willett Company, do you not?

A. No, they do not.

Q. They solicit business for movement, then, between points, point-to-point, or, using your own words, station-to-station, if you want to call it that, on these routes, do they not—or they would, would they not?

A. They would solicit freight for all points on The Pennsyl-

vania Railroad.

Q. Certainly. And after they solicited the freight, and got it, it would move, if it were to move between any other points than the two key points which you have spoken of here, by motor vehicle, and the motor vehicle movement would be a movement by The Willett Company, handled by The Willett Company;

that is right, is it not?

238 Mr. HARRY YOCKEY. Now, just a moment, counsel. Does your question go to less-than-carload treight only?

Mr. Anderson. Yes, less-than-carload freight only.

A. I am sorry, but I don't just understand that question. Will you be a little more specific?

By Mr. Anderson:

Q. Freight solicited by The Pennsylvania Railroad, moving, we will say, to make it specific, using these as illustrative points, between Kalamazoo, Michigan, and Fort Wayne, Indiana, would be moved by motor vehicle all the way, by The Willett Company, would it not?

A. Not necessarily.

Q. Less-than-carload freight-or less-than-truckload freight!

A. Not necessarily:

Q. All right. That is the way I understood Mr. Yockey's statement. Then where would it not move, or in what kind of instances would it not move by The Willett Company?

A. Where the volume of the freight, or the volume of the shipments, or the volume of the traffic out of a particular station, might

enable it to move in a car direct to Fort Wayne.

Q. Do you mean to say, then, Mr. McArdle, that in addition to hauling carload shipments direct on the railroad, you are also going to haul less-than-truckload shipments on the railroad?

A. We don't haul anything on the railroad.

Q. I mean, The Pennsylvania Railroad. Do you know whether they are going to do that or not?

239 A. No.

Q. If that be true, that is a new aspect to this matter.

A. I don't know anything about it.

Q. Well, you know, do you not-

Mr. EGGERS. Just a moment, please, Mr. Anderson. What was that last answer, Mr. Reporter?

(Answer read.)

By Mr. Anderson:

Q. Well, you do know—

Mr. HARRY YOCKEY. Just a moment. Would you be good enough, please, Mr. Reporter, to go back and read the last three or four questions and answers?

(The record was read.)

Mr. HARRY YOCKEY. I think the record is confused. Counsel starts out talking about hauling carload freight, and then he talks about less-than-truckload freight—

Mr. Anderson. Just a moment.

Mr. HARRY YOCKEY. And that is not involved—that is, less-than-carload freight.

Mr. Anderson. You say less-than-truckload freight is not involved?

Mr. Eggers. Off the record.

(Discussion outside the record.)

Mr. EGGERS. Back on the record.

Mr. Anderson. I will desist from any further questions along this line for the time being. I think I am about through.

240 Mr. Eggers. Go ahead and finish.

By Mr. Anderson:

Q. Now, Mr. McArdle, I direct your attention to applicant's exhibit No. 5 here. Do you have a copy of that exhibit before you?

A. Yes, sir.

Q. You purport to show there the estimated monthly tonnage that would move between points on the proposed routes, do you not?

Mr. HARRY YOCKEY. Now, then, if the Joint Board please, I want to object to that. Counsel is now attempting to cross-examine Mr. McArdle on an exhibit that was introduced and prepared by Mr. Christie, the railroad witness. This man is not a railroad witness.

Mr. Eggers. Sustained.

Mr. HARRY YOCKEY. So why try to cross-examine him on an exhibit that was introduced by another witness?

Mr. Eggers. The objection has been sustained.

Mr. CLARDY. Well, of course, the applicant ought to know about it.

Mr. Eggers. Well, you will have an opportunity to cross-examine Mr. Christie.

Mr. Anderson. That is all right. I would just as soon cross-examine Mr. Christie.

Mr. CLARDY. I am merely stating that if the applicant does not know its own business, it ought to.

Mr. HARRY YOCKEY. It is not a question of the applicant knowing the tonnage moving on The Pennsylvania, Railroad.

Mr. Eggers. Let us not discuss the matter any further, gentlemen. The objection has been sustained. Proceed.

By Mr. BARKELL:

Q. Do I understand you to say, Mr. McArdle, that you do not know how much business is moving over these routes?

A. Tonnage is not a factor in our arrangement.

Q. How is that again?

A. I say, tonnage is not a factor in our arrangement.

Mr. CLARDY. I am sorry, your Honor, but the witness is not talking very loudly. May I hear that last question and answer again, please.

(The record was read.)

Mr. Eggers. Continue, Mr. Anderson.

Mr. Anderson. I think I have just one further line of questioning, your Honor, which I hope will be very brief.

Mr. Eggers. Go ahead.

By Mr. Anderson:

Q. Mr. McArdle, you are in the trucking business.

A. Yes.

Q. And you have been for how many years, did you say?

A. With the applicant, six years.

Q. Six years with the applicant?

A. Yes.

Q. And you are familiar with every point on the proposed routes, are you not?

A. Yes, sir.

Q. Now, will you please tell the Commission, if you will, how many other motor carriers, other than The Willett Company, are operating, serving Grand Rapids, or between Fort Wayne and Grand Rapids?

Mr. HARRY YOCKEY. Well, now, just a moment. I want to raise the same objection to that, if the Board please, that the operations of other truck lines, as to how many there are, and so forth,

are not involved in this case. I object on that ground.

Mr. Eggers. Overruled.

Mr. HARRY YOCKEY. And I object to it on the further ground that it is not proper cross-examination. I did not go into any of that line of questioning with this witness on his direct examination.

Mr. Eggers. Overruled.

By Mr. ANDERSON:

Q. Do you know how many there are?

A. No. sir.

Q. And you never made any effort to find out, did you?

A. No.

Mr. Anderson. That is all.

Mr. EGGERS. I think we will take a short recess, before we proceed with further cross-examination.

(A short recess was taken.)

Mr. Eccess. Come to order, please, gentlemen. It is now 5:15. We are going to finish the cross-examination of Mr. McArdle, and then we are going to adjourn for the day, and reconvene not later than 8:30 a, m. tomorrow morning. I think by running a little later tonight, and starting earlier in the morning, we can accomplish much more than we could get in, in a night session, unless we spend several hours at it. As far as a session on Thursday is concerned, we do not need to discuss that now, but we will wait until tomorrow, and see what progress we make. It may be that we will be able to move along fast enough so as not to have a session on Thursday. If necessary, we can have a session tomorrow night.

Mr. HARRY YOCKEY. If your Honor please, may we discuss this

matter a little further off the record?

Mr. Eggers. Yes.

(Discussion outside the record.)

Mr. Eccens. Back on the record. Proceed with the cross-examination.

Mr. Moberly. I have a few questions, please.

By Mr. MOBERLY:

Q. Mr. McArdle, do you have in mind the statement which was made on the record here by your attorney, Mr. Yockey, relative to the operations which may be conducted over these proposed routes?

A. (No answer.)

Q. I refer to the statement with respect to which you stated, in response to a question put to you by the Chairman, that you accepted as your own.

A. Oh, vaguely now; yes.

Q. In the situation which was outlined by Mr. Yockey there, do you—and when I say "you", of course I am referring to your company, The Willett Company, you understand.

A. Yes.

Q. Intend to conduct a pick-up and delivery service in conjunction with your line-haul movement at the points which The Pennsylvania Railroad may determine to be points where such pick-up and delivery service is necessary?

A. No.

Q. Well, now, in the statement which he made, did not Mr. Yockey say that the pick-up and delivery service would be rendered wherever The Pennsylvania Railroad determined that the service was necessary, or was needed?

A. No.

Mr. HARRY YOCKEY. I did not say that.

The WITNESS. No. sir.

Mr. Moberly. Well, of course, the record will have to speak for itself, but that is the way I understood your statement.

Mr. HARRY YOCKEY. No; I did not say that they would do it, wherever it was necessary or needed. I said that there were certain instances where they desired the work to be done.

245 Mr. Moberly. And that it would be up to The Pennsylvania Railroad to determine what points those were!

Mr. HARRY YOCKEY. That is correct, and to make a request on The Willett Company, to do the work.

Mr. Morerly. Well, that is just exactly the question that I asked, Mr. Yockey.

Mr. HARRY YOCKEY. Well, I did not understand the question that way.

The WITNESS. Will you repeat the question.

Mr. HARRY YOCKEY. Read it.

Mr. Moberly. I will restate it.

By Mr. MOBERLY:

Q. My question, Mr. McArdle, is this: Will not The Willett Company perform a pick-up and delivery service at any point along these routes, where The Pennsylvania Railroad desires that service to be performed—

Mr. Anderson, And requests it.

By Mr. MOBERLY:

Q. And requests that the service be performed by The Willet

Company?

A. The Willett Company of Indiana will pick-up and deliver freight locally, as it now does, for The Pennsylvania Railroad, at any point at which the arrangement is made.

Q. And that service will be conducted at points where The Willett Company is conducting a line-haul operation; is that not

true?

A. Repeat that.

246 Mr. Moberly. Read it, please.

(Question read.)

A. I don't quite understand the question.

By Mr. MOBERLY:

Q. For example, now, if the operation-

Mr. BARKELL. Just a moment. Are we just going to waste some more time here, now?

The WITNESS. No, sir. I am sincere in that. I really do not know what his question means.

Mr. HARRY YOCKEY. I do not think the question is clear at all.

Mr. Anderson. The question is very explicit.

The WITNESS. Will you repeat it once more, please.

Mr. Moberly. To clarify it, I will put it in the form of an example.

The WITNESS. O. K.

By Mr. MOBERLY:

Q. If the operations proposed herein are authorized by the Interstate Commerce Commission, your company will perform a line-haul service from Big Rapids, Michigan to Kendallville, Indiana, will it not?

Mr. HARRY YOCKEY. Now, just a moment. Are those both

points on the Pennsylvania Railroad?

Mr. Anderson. Yes.

Mr. Moberty. Yes; they both are, sir, as far as I can see.

Mr. HARRY YOCKEY. All right.

A. Do you mean, in one operation, would we haul from 247 Big Rapids to Kendallville?

By Mr. MOBERLY:

Q. Yes.

A. No.

Q. All right. From Kalamazoo, Michigan, then, to Kendallville, Indiana, will your company perform a linehaul service?

A. If the freight is given to us by the railroad, we will, ves, sir.

Q. And if the railroad company asks your company to perform a pickup and delivery service at Kalamazoo, Michigan, you will perform that service, will you not?

A. Under an arrangement, a local arrangement covering pickup

and delivery, yes, sir.

Q. And if you were performing such pickup and delivery service in Kalamazoo, Michigan, your trucks would pick up the freight at the door of the consignor in Kalamazoo, would they not?

A. Yes.

Q. And your trucks would then carry the freight in a linehaul movement to Kendallville, Indiana; that is true, is it not?

A. No.

Q: How

A. It is not.

Q. What would be done with the freight, then?

A, City trucks, local pickup and delivery trucks, if we had a contract or agreement at Kalamazoo to perform that service for

the railroad company, would pick the business up at the consignor's place of business and bring it to the freight

house, and if The Pennsylvania Railroad so directed us to handle that by truck between Kalamazoo, Michigan, and Kendallville, Indiana, on one of our linehaul trucks, that would be done.

Q. The freight would move to Kendallville, Indiana, by Wil-

lett truck.

A. Yes.

- Q. And then if you were requested by the railroad to perform pickup and delivery service at Kendaliville, Indiana, your truck would deliver that freight to the door of the consignee, would it not!
 - A. Our local pickup and delivery truck, yes, sir.

Q. A truck owned by The Willett Company.

A. Our own local pickup and delivery truck, yes, sir.

Q. Now, in answer to a question that was put to you by Mr. Yockey, I believe that you stated that there would be no difference between the proposed service, if the authority is granted, and the service which your company is at the present time conducting over its existing authorized routes.

A. Yes.

Q. To that question I believe you answered: Yes.

A. Yes, sir.

Q. Is that right?

A. Yes.

249 some operations that have been authorized by the Interstate Commerce Commission to be conducted by The Willett Company, there occurs this "prior and subsequent rail movement" restriction?

A. Yes.

Q. That is true, is it not?

A. Yes, sir.

Q. Then there would be a difference, would there not, Mr. Mc-Ardle, because in this proposed operation you are not proposing to accept any "prior and subsequent rail movement" restriction—are you?

A. That is correct.

Q. But that restriction does occur, as you say, in some of your other authorities.

A. Yes.

Q. Well, then, your answer should have been "No" to the question put to you by Mr. Yockey, should it not?

Mr. HARRY YOCKEY: Just a moment.

A. Yes.

By Mr. MOBERLY:

Q. That is, there is a difference.

Mr. HARRY YOCKEY. Just a moment, please, counsel. I object to the question as argumentative your Herior.

to the question as argumentative, your Honor.

Mr. Moberly. I want to get the matter straightened out, your Honor, just to get the record straight here, with respect to the authority that is sought here, and the existing authority.

250 Mr. EGGERS. I think the record is clear.

Mr. Moserly. All right.

Mr. HARRY YOCKEY: He has answered the question, anyway.

Mr. Moberly. I believe that is all I have.

By Mr. CLARDY:

- Q. Witness, in this proposed extension operation, is there any point on any of the routes where you propose to establish a separate terminal of your own?
 - A. A separate terminal?

Q. Yes, sir.

A. No.

Q. Is it proposed, instead, that you use the stations of The Pennsylvania Railroad Company as your docks?

A. No.

*Q. What docks, or what terminal facilities, will you use, then?

A. We do not use any docks or terminal facilities.

Q. You are going to leave your trucks, then, out in the middle of the street somewhere, are you?

A. No.

Q. You are going to load your trucks off the railroad terminal docks, are you not?

A. Yes.

Q. Well, then, Witness, are you not just quibbling a little with me, when you answer that last question as you have?

Mr. HARRY YOCKEY. Just a moment.

A. (No answer.)

251 By Mr. CLARDY:

Q. As a matter of fact, Witness, do you not intend to use the docks of The Pennsylvania Railroad Company at each of

these points as your own dock or terminal facilities?

Mr. Harry Yockey. Just a moment. If the Board please, I object to counsel's remark about quibbling. Counsel asked this witness a question, and the witness answered it correctly. The mere fact that they go to a station of The Pennsylvania Railroad to get freight, does not mean that that is their dock, and it is not their dock.

Mr. CLARDY. Well, now-

Mr. HARRY YOCKEY. I object to the question.

Mr. CLARDY. I say, the witness was quibbling, in view of certain other matters that have occurred here, as well.

Mr. HARRY YOCKEY. No, he is not doing anything of the kind.

You are the one who is doing the quibbling.

Mr. CLARDY. I am speaking of the experience that others have had, who were examining the witness previously.

Mr. HARRY YOCKEY. All right.

Mr. CLARDY. The experience that they had with him before I got to him.

Mr. EGGERS. Now, just a moment, gentlemen. What is before us? There is a question pending, I believe.

Mr. CLARDY. Yes, let us have the last question read, and we will.

see whether he was quibbling or not.

Mr. HARRY YOCKEY. Will you go back, please, Mr. Reporter, and read the last two or three questions, since Mr. Clardy began to examine the witness.

(The record was read.)

Mr. Eggers, You may answer that last question.

A. No, sir.

By Mr. CLARDY:

Q. By your last answer, then, Witness, are we to understand that you are not to use, or not intending to use, any dock or terminal facilities of anyone, anyplace, in this operation?

Mr. HARRY YOCKEY. Well, now, just a moment. I want to ob-

ject to that question also, if the Board please.

Mr. Eggers. On what ground?

Mr. HARRY YOCKEY. Mr. Clardy is not getting into the record the proper kind of questions, involving this operation. He is asking him now as to whether or not those docks are going to be their docks, that is, the docks of The Willett Company—

Mr. EGGERS. No.

Mr. CLARDY. No.

Mr. HARRY YOCKEY. The witness said "No."

Mr. CLARDY. That was not the question.

Mr. EGGERS. As I understand it, he just asked him whether or not they are going to use them.

Mr. HARRY YOCKEY. I understand him to ask the witness if they were going to use them as their own, and he said "No."

. Mr. Eggers! Overruled.

253 The WITNESS. What is the question now?

Mr. CLARDY. Will you read it, please?

(Question read.)

A. That is correct.

By Mr. CLARDY: .

Q. Well, then, Witness, were you not incorrect a while ago here when you said that you intend to load and unload freight at the railroad docks exactly as any other trucking company would do?

Mr. HARRY YOCKEY. Now, just a moment. I want to object to

that question also.

Mr. Eccens. Perhaps we can shorten this, if I may ask him a question at this point.

Mr. CLARDY. Certainly.

By Mr. EGGERS:

Q. Mr. Witness, what are you going to do with this freight when it arrives at a certain destination?

A. We are going to back up to the Pennsylvania freight house, and give it to them. It is their property.

Q. At their dock?

A. Yes.

254 Q. The dock of the railroad company.

A. It is their dock, not ours. We don't lease it from, them, or anything of that sort.

Q. But you are going to use it, are you not-

A. No.

Q. To put the shipments on the dock?

A. But it is the freight of The Pennsylvania Railroad all the time.

Q. I understand.

A. From the time we get it until the time we deliver it. We

pick if up at their dock, and we deliver it at their dock.

Mr. HARRY YOCKEY. Counsel is asking a different question, now. He is asking if it is not their dock, and it is not their dock. He is asking if they are their terminal facilities, and they have no terminal facilities.

Mr. CLARDY. I may appear to have a very limited command of the English language, but the words that I use are all simple,

and easily understandable.

Mr. Eccess: I think the question that was propounded to the witness by Mr. Clardy last, is still unanswered. Will you read the question, please, Mr. Reporter.

(Question read.)

Mr. HARRY YOCKEY. Now, your Honor, I want to object to that question on the ground that he has in there "exactly as any other

truck company would do." Now, he has testified that they haul freight to and from those docks, that they de-

liver it there, and pick it up there

Mr. CLARDY. I did not say anything about that in my question.

Mr. Eggers. Overruled.

By Mr. CLARDY:

Q. Can you answer my question, Witness?

A. Repeat it, please.

Mr. CLARDY. Will you go back once more, Mr. Reporter, and read the question back to him.

(Question again read.)

A. We will load and unload freight at the docks of The Pennsylvania Railroad Company, yes, sir.

By Mr. CLARDY:

Q. You have been in the trucking business, you said, for quite a number of years, I believe.

A. Yes.

Q. And you know how common motor carriers generally use dock facilities that belong to others, do you not?

A. Yes.

Q. Is there any difference in the use that you propose to make of the facilities of The Pennsylvania Railroad Company, and particularly the docks of The Pennsylvania Railroad Company.

and the use made of the docks of shippers and other carriers, by common motor carriers generally?

A. Very definitely, yes.

Q. What is the difference?

256 A. We maintain no terminals, we maintain no dock personnel, we maintain no despatchers for the trucks, and as far as the dock facilities are concerned, we pick up freight that is delivered to us by The Pennsylvania Railroad at a particular dock, and deliver it to The Pennsylvania Railroad at another particular dock.

Q. Now, Witness, when a common motor carrier comes up to the dock of a shipper, is there any difference in the way that that carrier handles the freight at the dock of the shipper—

Mr. HARRY YOCKEY. Well, now, just a moment. I want to

Mr. Eggers. Let Mr. Clardy finish his question.

Mr. HARRY YOCKEY. Yes.

By Mr. CLARDY;

Q. And the manner in which you will handle the freight at the dock of the railroad company, under the description which you have just given me?

Mr. HARRY YOCKEY. Now, just a moment—on the ground that we are now getting into matters here that are not involved in the proceeding. What difference does it make how some other motor carrier may operate? If these people are operating in a certain way, as far as some physical operation is concerned, such as backing up a truck, or something of that sort, why, those things are apparent.

Mr. Eggers. The objection will be overruled.

By Mr. CLARDY:

Q. Answer the question, please.

257 A. Repeat it.

Mr. CLARDY. Read it.

(Question read.)

A. No, sir.

By Mr. CLARDY:

Q. Witness, do you not find it necessary to service your trucks

just as any other motor carrier must do?

Mr. HARRY YOCKEY. Now, if the Board please, again I want to object. Why must we have this continuous reference to other carriers? That is not involved here. Let him ask the witness what we do. I think it is very unfair to go into a matter of that sort here. We do not know what other carriers may or may not

do. Let counsel ask the witness what we do. That is competent, and we have no objection to that.

Mr. Anderson. If the Board please, Mr. Yockey has insisted to you that this is different, that it is a different kind of operation.

Mr. HARRY YOCKEY. It is not a question of what the other carriers do. It is a question of what The Willett Company does, which is serving The Pennsylvania Railroad.

Mr. Anderson. Exactly, and you claim that it is different, and we have a right to show that it is not different; and we have already shown it, and will continue to show it time and time again.

Mr. Clarry. Now, may I have an answer to my question,

258 Mr. HARRY YOCKEY. Just a moment, please. I have no objection to the question, if counsel will leave out the comparative end of it. We have nothing to hide about this service, but when you get into that part of it, you get into an ambiguous situation, where you are comparing it to some other service.

Mr. Eggers. Overruled-

Mr. HARRY YOCKEY. And I am going to object to it on that ground.

Mr. Eccess. The objection is overruled, and the witness may answer the question to the best of his ability.

Mr. HARRY YOCKEY. If he knows.

Mr. Eggers. If he knows.

Mr. HARRY YOCKEY. All right.

Mr. Eggers. If he can make the comparison.

By Mr. CLARDY:

Q. Can you answer my question, Witness?

A. State it again.

Mr. CLARDY. Read it, please.

(Question read.)

A. We service our equipment; yes.

By Mr. CLARDY:

Q. Surely. And you maintain the terminals and the employees necessary for that purpose, do you not?

A. We do not maintain any terminals; no, sir. We have several

garages.

Q. You do? A. Yes.

Q. Will you have some garages on these lines that are proposed?

A. We have one at the present time, and we will probably retain it, but we will not have any more.

Q. Where will that be located?

A. Grand Rapids.

Q. Well, now, Witness, that brings me to my question of the kind of service that you are rendering at Grand Rapids at the present time. You are picking up and delivering freight there, are you not?

· A. Yes.

Q. And you are proposing, if this authority is granted, to continue to do that, are you not?

A. Yes.

Q. So that if a shipper should have a full truckload of freight, although a less than carload shipment, to offer you at Grand Rapids, to move to some point on these proposed routes in Indiana, short of Fort Wayne, you propose, as you testified a moment ago, to pick that shipment up on your pickup truck; is that correct!

Mr. HARRY YOCKEY. Well, now, just a moment, I want to object again, if the Board please. Counsel is getting into the question again of what the railroad will do, and this witness is not a railroad witness.

Mr. CLARDY. I am not asking the witness anything about the railroad, or what the railroad will or will not do. I am ask-

260 ing him what The Willett Company will do.

Mr. HARRY YOCKEY. And they cannot do anything unless the railroad turns it over to them. Mr. Christie is in a better position to explain the differentiation in the service, as to what they will do. This man's company will take what they turn over to it.

Mr. Econs. Will you let me hear that last question again, please, Mr. Reporter.

(Question read.)

Mr. HARRY YOCKEY. I object to the question, if your Honors please, on the further ground that the question presupposes that the shipment is going to be offered direct to The Willett Company, and that is not the case, in any instance. Counsel is just assuming something that the evidence is clear as a bell on.

The WITNESS, I thought he was saying that the railroad had

it and offered it to us.

Mr. HARRY YOCKEY. No, he was asking you something else.

Mr. CLARDY. It is offered to them sometime, somehow, because, of course, carriers do not transport freight that is not offered to them.

Mr. Eggers. Objection sustained.

Mr. CLARDY. What is that?

Mr. Eggers. Sustained. The objection to the question is sustained.

Mr. CLARDY. Will you read my question again, please, 261 Mr. Reporter and I will see if I can reframe it. Will you also read the objection, because I still do not know what the objection was, other than that counsel just did not like my question.

(The record was read.)

Mr. EGGERS. Now, just a moment, gentlemen. Let the record show, Mr. Reporter, that the Joint Board has reconsidered its truling, just made, and upon reconsideration, the objection is overruled.

Mr. HARRY YOCKEY. Now, may I-

Mr. Eggers. Just a moment.

Mr. CLARDY. Thank you.

Mr. EGGERS. Let the record show, Mr. Reporter, that after considering the question further, and the various points that have been presented in the argument, the ruling is reversed, and the objection now is overruled.

Mr. HARRY YOCKEY. All right.

Mr. CLARDY. I thought perhaps our argument might have made it appear as though it were a different question.

By Mr. CLARDY:

Q. Now, will you answer my question, Witness?

A. We do not hold ourselves out to the shipping public to pick up freight or deliver it.

Mr. CLARDY. Well, now-

Mr. Eggers. That is not an answer to the question.

Mr. HARRY YOCKEY. Yes, it is, your Honor.

Mr. EGGERS. No, that does not answer the question. That question can be answered by yes or no. Let me say to you now, Mr. Witness, that when a question is asked of you that is susceptible of a direct answer, answer it that way; and if you cannot answer it, just say so, but do not try to evade the question. Do not beat around the bush. I am going to say for the record, now, that we are tired of that, and we are absolutely through with it, as far as this Board is concerned. If you cannot answer the question, say so. There is nothing reprehensible about a witness saying that he cannot answer a question. But to come here and take the witness stand, and waste our time, and the time of everybody else, by trying to evade simple questions, when you know very clearly what the questioner has in mind, is not going to be tolerated any longer.

Mr. HARRY YOCKEY. Now, if the Board and the Examiner please, may I say this for the record: Counsel is asking the witness if they would do a certain thing—referring to The Willett Company.

Mr. CLARDY. That is right.

Mr. HARRY YOCKEY. And the evidence here is that The Willett. Company does not do that.

Mr. CLARDY. Oh, my!

Mr. Eccess. All right. Just a moment, now. Let us hear the question again.

Mr. HARRY YOCKEY. Yes.

263 Mr. Eggens. And if the witness cannot answer it, let him say so.

Mr. HARRY YOCKEY. I think the record will show, your Honor, that the witness has not been quibbling, or trying to evade any question.

Mr. EGGERS. Well, the record will have to speak for itself as to

that. Read the question.

(Question read.)

By Mr. CLARDY:

Q. Answer the question.

The Witness. I don't know just exactly where we stand here, now. It is all right for me to answer?

Exam. HARRISON. Yes.

Mr. Eccess. Yes, go ahead and answer the question.

A. We would pick it up on the pick-up truck, yes, sir, and deliver it to the freight house.

By Mr. CLARDY:

Q. Well, now, would that be the invariable custom, regardless of the fact that it was a full truckload?

A. (No answer.)

Q. In other words, so that you will understand my question, Witness, in every instance where there is a full truckload to be picked up at the dock of the shipper, do we correctly understand from your testimony that under no circumstances would the shipment be sent immediately on its way to destination, but instead,

would be brought to the dock or terminal of the railroad, and there unloaded, and then reloaded onto another truck?

A. Yes.

Q. Is that a correct statement of the way in which it would be handled?

A. Yes.

Q. Without any exceptions?

A. Yes, sir.

Q. And regardless of the fact that the scheduled time of the departure out of Grand Rapids might be such that the shipment would have to be held over until the next day, even though it was a full truckload?

A. Yes, sir.

- Q. In other words, even though it was a full truckload shipment, it nevertheless would be handled in that fashion?
 - A. Yes, sir.
 - Q. In all cases?
 - A. Right.
- Q. Then, it would not be true that the handling of this freight in truck service by the trucking company, would always result in a saving of time, would it?
 - A. I don't know.
- Q. Did you have anything to do with preparing applicant's exhibit No. 4 here?
 - A. (No answer.)
 - Q. The schedule of operations
- 265 A. Four?
 - Q. Yes.
 - A. Yes, sir. I collaborated with Mr. Christie on it.
 - Q. You did what?
 - A. I collaborated, I say, with Mr. Christie, on it.
 - Q. Mr. Christie told you what he wanted, did he?
 - A. Yes.
 - Q. And you agreed?
 - A. Yes.
 - Q. That is right, is it?
 - A. Yes, sir.
- Q. Well, then, do I correctly understand from the way in which you have set this up, based on your knowledge of the exhibit, that you intend to make a separate truck operation from Fort Wayne, Indiana, to Kalamazoo, Michigan, separate and distinct I mean from the other physical operations set out on applicant's exhibit No. 4?
 - A. No, sir.
 - Q. That is not correct?
 - A. No.
- Q. All right. Now, going to the first entry on applicant's exhibit No. 4, that entry proposes that the truck shall leave Fort Wayne at 9 a. m., and get to Kalamazoo at 4 p. m.; and as part of that same bracket, you propose an operation out of Kalama-

zoo at 11 a. m., arriving at Fort Wayne at 4 p. m.

- 266 A. Yes.
- Q. Now, my question is this: is that physical operation between those two points to be treated as a separate unit in the operations that you are requesting authority to conduct?
- A. It is the schedule that we propose to put into effect between Fort Wayne and Kalamazoo.
- Mr. CLARDY. Well, now, Witness, you have apparently missed the point of my question.

Mr. Eggers. That does not answer the question.

Mr. HARRY YOCKEY. Separate from what?

By Mr. CLARDY:

Q. Let me ask you this question: is it proposed that this truck that operates from Fort Wayne to Kalamazoo, will go beyond Kalamazoo, up to Grand Rapids or any other point, or. will it turn around and go back to Fort Wayne at Kalamazoo?

A. It is proposed at this time that the truck will leave Fort Wayne, and go to Kalamazoo, and lay over there, and come back

the next day.

Q. In other words, then, there will be no through truck operation of any kind from Fort Wayne, for example, to Grand Rapids, will there?

A. No.

Q. Nor to any other points on this route at least, except to Kalamazoo?

A. That is correct.

Q. That is right, is it! A. Yes, sir.

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Q. All right. Then, in every instance where a shipment of freight might be tendered to you at some point north of Fort Wayne, in Indiana, or in case it was Michigan, where it would be brought to the line through some interline arrangement with some other carrier-I say, in every instance where a piece of freight originates at any of these points, if it is destined to a point north of Grand Rapids and south of Cadillac, it will be necessary to transfer that shipment from one truck to another at Grand Rapids, will it not?

A. Well, that is purely an operating problem from the rail-

road's standpoint. Q. How is that ?

A. I say, that is purely an operating problem, from the railroad's standpoint.

Q. All right, but if you get the freight you will handle it that

way, will you not?

A. We will take freight from The Pennsylvania freight house,

as they give it to us, to go over this route.

Q. Well, in actual operation-and we will come back to it again-if a piece of freight is offered to you from Kendallville, Indiana, or some other point north of Fort Wayne. Indiana, destined to a point north of Grand Rapids, and south of Cadillac.

Michigan, that freight will be handled by one truck to Kalamazoo, and transferred there, will it, or will it move on

up to Grand Rapids, or just how will it be handled?

A. That is a railroad proposition. We would haul that freight to the terminal at Kalamazoo, and then if the railroad company decided to move it by truck, or by rail—well, that would be its job.

Q. Do you know how that is going to be done?

A. No, sir; I don't know how it will be done.

Q. Well, then, if I should attempt to have you tell me how you are going to move a piece of freight out to one of the little towns that are intermediate between Muskegon and Grand Rapids, Michigan—and I am speaking now of some freight that might be offered to you at some point north of Fort Wayne and south of Kalamazoo—you would not be able to tell me how you are going to handle it, would you?

A. No, I would not.

Q. Well, Witness, did you not ever have any discussion with the railroad, or representatives of the railroad, about what you were going to do in this operation?

A. Yes.

Q. Are you not interested in knowing how much business is going to be given you between certain points?

A. Yes.

Q. And how you are going to handle it?

A. Yes, sir.

Q. Well, how did it happen, then, that you did not find out about how you are going to handle business to the

various points on the route?

A. In this schedule that we prepared here, applicant's exhibit No. 4, we set up these various routes for truck schedules, over which we would operate trucks. The arriving time and the departure time is shown. Now, the freight that would move on the particular schedule, so far as we are concerned, would not have any relation to what freight might move on another schedule, adjacent to it. If the authority contained in our certificate, the authority that we might secure, covered an operation involving a progressive movement of freight from one schedule to another, and the railroad so elected to do that, or wanted it done, then it would be done; but so far as freight is concerned that would originate on schedule No. 1, say, as an example, between Fort Wayne and Kalamazoo, to be ultimately delivered by truck progressively to the Mackinaw-City-Petoskey schedule-points on that schedule-I cannot tell you about that. As I said before, that would be a railroad problem, as to how they would want to handle that.

Mr. CLARDY. Mr. Reporter, will you read that last answer,

please.

(Answer read.)

By Mr. CLARDY:

Q. Do I undestand your answer to be, Witness, that you do not

Mr. HARRY YOCKEY, Well, now

By Mr. CLARDY:

Q. Or that it is purely a matter for the railroad?

A. Yes, sir.

Q. Is that the substance of what you are saying?

A. Yes, sir.

Mr. BARKELL. Let me interrupt to ask a question right here, please, Mr. Clardy.

Mr. CLARDY, Yes.

By Mr. BARKELL:

- Q. Mr. McArdle, did you or anybody else connected with The Willett Company make any survey to see whether or not this would be a paying proposition, as far as The Willett Company is concerned! "
 - A. We know that it would be a paying proposition.

Mr. Eggers. That is not an answer to the question.

By Mr. BARKELL:

.Q. Did you make any survey to find out?

A. (No answer.)

Q. Or, I will ask you, how do you know!

A. Well, our arrangement with the railroad is such that it will be a paying proposition.

By Mr. CLARDY:

Q. Do you mean by that, Witness, that the railroad representatives told you something, and you accepted it without question?

A. We have arrangements in effect-

Q. Now, that is a simple question, that can be answered by yes or no. Answer the question.

Mr. Eggers. Answer the question. 271

A. Repeat it.

Mr. CLARDY. Read it, please.

(Question read.)

A. No.

By Mr. CLARDY:

Q. Now, coming back again to applicant's exhibit No. 4, Witness, if we may.

A. Yes.

Q. I note that the operation from Fort Wayne to Kalamazoo is scheduled to arrive in Kalamazoo at 4 p. m., and the next entry, showing the movement north from Kalamazoo to Grand

Rapids, has its scheduled departure time at exactly 4 p. m. Do. you notice that?

A. Pardon me. I don't just get that.

Q. All right. Let us start all over again. Do you have applicant's exhibit No. 4 before you there?

A. Yes.

Q. Will you look at the first line, please,

A. Oh, yes.

Q. Showing arrival in Kalamazoo at 4 p. m.

A. Yes.

Q. And then the truck leaves Kalamazoo, going to Grand Rapids at 4 p. m.

A. Yes, sir.

Q. Do you see that?

272 A. Yes.

Q. Is it proposed that there will be any freight brought in on that truck that leaves Fort Wayne in the morning, and gets into Kalamazoo at 4 p. m., that will be transferred to the schedule leaving Kalamazoo at 4 o'clock for Grand Rapids?

A. (No answer.)

Q. Is it contemplated that any of that freight will be transferred to the schedule leaving Kalamazoo for Grand Rapids at 4 o'clock?

A. That is a railroad problem also.

Q. Well, Witness, do you not have even a slight interest in this application?

A. Certainly.

Q. Well, is that not something for you to think about, as to whether you are going to have any freight on that run that leaves Kalamazoo for Grand Rapids?

A. Not necessarily; no, sir.

Q. You do not care?

A. No.

Q. Well, then, let me put it another way: you could not possibly transfer any freight from the truck that gets into Kalamazoo from Fort We ne, to the truck that leaves Kalamazoo for Grand Rapids, at e... ctly the same hour, could you?

A: No.

Q. You could not possibly transfer freight in nothing flat, and get out of there, could you?

A. That is right.

Q. So that, then, as a matter of fact, any freight that is picked up, according to your schedule here, north of Fort Wayne, in Indiana, to use an illustration, scheduled for Grand Rapids, that is picked up on your truck this morning, we will say, if you have

the authority, would get into Kalamazoo at 4 p. m. this afternoon, if you made the schedule, and then could not possibly leave Kalamazoo until the next afternoon when the truck leaves at 4 o'clock, could it?

A. That is correct.

Q. Is there any saving in time there, that you know of?

A. None.

Q. You would not think, if you were a customer, or a shipper, that that was speedy, fast, expedited, efficient service, would you?

A. I would say, not.

Q. How?

A. No.

Q. No. Now, Witness, have you looked at this schedule here very carefully, to see how disjointed it is at other places? For example, suppose you were a shipper or receiver of freight away up in the northern end of the state of Michigan?

Mr. HARRY YOCKEY. Well, now, just a moment. I want to object, if the Joint Board please, to the use of the word "dis-

274 jointed" in that question. The mere fact that Mr. Clardy may be disjointed, does not make the schedule disjointed; and just because these particular routes do not happen to hit just exactly at a given time, does not indicate that all of these movements are going by truck. And furthermore, Mr. Christie has testified, in the illustration that he gave this morning, that some of the shipments would go to Fort Wayne by rail.

Mr. CLARDY. Well, no; not if your witnesses are to be believed.

Mr. HARRY YOCKEY. They are to be believed.

Mr. Eggers. Well, now, just a moment, gentlemen. Is there an objection pending?

Mr. HARRY YOCKEY. Yes.

Mr. Eggers. Read the question, please.

Mr. BARKELL. I do not believe Mr. Clardy finished his question.

(Question read.)

Mr. HARRY YOCKEY. Right on that particular situation, your Honor, Mr. Christie testified, in the illustration that he gave, that shipments would be carried into Kalamazoo by truck, and would go by rail from there to Fort Wayne.

Mr. CLARDY. To Fort Wayne?

Mr. HARRY YOCKEY. Or rather, I mean to say Grand Rapids.

Mr. CLARDY. Not if I heard him right.

Mr. HARRY YOCKEY. Well, you did not hear him right, then.

275 Mr. EGGERS, Well, now, just a moment, gentlemen. I really do not remember what that testimony was. Read the question to me again will you please, Mr. Reporter.

(Question again read.)

Mr. Ecores. Are you objecting to the entire question, Mr. Yockey, or just to the use of the word "disjointed"!

Mr. HARRY YOCKEY. I am objecting to that part, your Honor,

where he characterizes the schedule as being disjointed.

Mr. CLARDY. Oh, your Honor, there is no opproblum intended in that. I am merely pointing out-or trying to ask the witness if he has noticed that they are not so hitched together as to make possible an expedited, convenient and efficient service.

Mr. Eggers. Well, then, are you willing to amend your question

to pead that way?

Mr. CLARDY. Surely.

Mr. EGGERS. All right.

Mr. CLARDY. I shall be glad to.

Mr. Eggers. Then the objection will be overruled.

By Mr. CLARDY:

Q. Now, Witness, you understand what we are trying to get at, do you not !

A. Let me hear it again.

Mr. EGGERS. Read it.

Mr. CLARDY. To save time, I will reframe it.

Mr. EGGERS. All right.

By Mr. CLARDY:

Q. Witness, have you looked closely enough at applicant's exhibit No. 4 here, to discover that a shipper of receiver of freight located up in the upper end of our state-

Mr. Eggers. By that do you mean Michigan?

Mr. CLARDY. Yes; Michigan.

Mr. EGGERS, All right.

By Mr. CLARDY:

Q. If he were depending upon this truck service to get him a shipment in, or a shipment out, would, because of the disjointed nature of the schedules here, find it almost impossible to get any , speedy or efficient service-

Mr. HARRY YOCKEY. Well, now-

Mr. CLARDY. Let me finish.

Mr. Eggers. Go ahead.

By Mr. CLARDY:

Q. And by "disjointed" I mean that the schedules are not coordinated so as to make it possible to transfer from one vehicle to another.

Mr. EGGERS. Are you objecting, Mr. Yockey?

Mr. HARRY YOCKEY. Not with that qualification; no.

A. (No answer.)

Mr. CEARDY. I am just trying to ascertain, Mr. Chairman, if this witness knows anything about the kind of service that he is really proposing; and if he does not, he can say right off that he does not know.

Mr. HARRY YOCKEY. This witness, your Honor, is testifying that they will take the freight that is offered to them by the railroad company. In some instances it moves part of the

way by rail, and part of the way by truck, and that will depend upon how the railroad desires to handle the particular freight. Mr. Christie is the man who can testify exactly with respect to the freight that they want to turn over to the truck line, to handle, and the part that they do not; and he will be able to testify minutely as to those phases of what the railroad will do.

Mr. Eggers. What do you say, Mr. Clardy!

Mr. CLARDY. May I point out the situation here, your Honor? I have been contending all along that the railroad is the applicant, and I think that the statement of my brother, without knowing it to be so, has indicated that that is the case. Now, I thought I was addressing my questions to the right fellow, this officer of the applicant here, but maybe I am wrong.

Mr. HARRY YOCKEY. I think you are.

Mr. EGGERS. With respect to the pending question, I think that question can be answered, and the objection, if there was one, is overruled.

Mr. CLARDY. Thank you.

Mr. Eggers. The witness may answer the question.

Mr. CLARDY. The Board has ruled that you may answer, Witness.

Mr. EGGERS. Pardon me just a moment further, Mr. 278; Clardy. I think there is something in what Mr. Yockey has said. No doubt a good many of these same questions will be asked of Mr. Christie. He probably would know more about the operating schedules.

Mr. HARRY YOCKEY. Yes.

Mr. Eccers. What do you say to that, Mr. Clardy?

Mr. Clardy. Why, I will concede that, your Honor. Probably the railroad does know a little more about them.

Mr. EGGERS. Well, now, let us see. May we hear the question again, please, Mr. Reporter.

(Question again read.)

Mr. HARRY YOCKEY. Of course, your Honor, there is the objection that that is not a question, but a speech.

Mr. BARKELL. Oh, let him answer the question.

Mr. Eggers. Yes.

Mr. BARKELL. Before we have to have it read over again. That question has been read twice, now, and possibly three times, and it takes a lot of time.

Mr. HARRY YOCKEY. We have had some of these questions read back here three or four times, because counsel does not give the witness a chance to answer, and see whether he can answer the question or not. We get into a discussion then between counsel, and the question has to be read all over again.

Mr. Eggers. Answer the question.

A. Taking the first part of that question as I understand 279 it, with respect to shipments into or out of a point in northern Michigan—I don't know where that would go into, or where that would come out of. If Mr. Clardy is referring to the

schedule between Mackinaw City and Petoskey, and Petoskey and Cadillac, that is one thing. I would like to have him be specific.

Mr. CLARDY. All right, Witness. I will be very happy indeed to endeavor to cooperate with you.

By Mr. CLARDY:

Q. Let us look at this map here now, so that there will not be any confusion—applicant's exhibit No. 2.

. A. All right:

Q. And let us pick out a point—well, let us pick out the town of Petoskey. You are going to serve that point, are you not?

A. Yes, sir.

Q. All right. Now, if a shipment is going to move out of Petoskey, Michigan, and is going to move south, have you given any consideration to what kind of connection it is possible to make if that shipment is going anywhere on the lines of The Pennsylvania Railroad?

A. Where would it be going from Petoskey?

Q. Well, let us take it down into Indiana somewhere.

A. All right. Well, it will leave Petoskey at 10 o'clock in the morning, and arrive at Cadillac at three o'clock in the afternoon, according to this schedule.

Q. All right. Now, let us just take a look at that. In which line of the exhibit do you find that?

A. The fourth from the bottom.

Q. All right. You are counting the double schedules as a line apiece, are you?

A. The fourth individual line.

Q. That is in the fourth individual line.

A. Yes.

Q. All right. Now, the shipment would leave Petoskey at 10 a. m.

A. Yes.

Q. And it would get into Cadillac at 3 p. m.

A. Yes, sir.

Q. All right. Then what happens to it ?

A. Well, it would be up to the railroad, then, as to just what they wanted to do with it.

Q. Well, is it going to move out of there by truck, or not?

A. Dwould not know that.

Q. Do you mean to say, Witness, that you do not have the slightest idea as to what is going to happen to that shipment?

A. No.

Q. Then the fact that there may be a truck scheduled out of Cadillac at 4 o'clock p. m.—no, just a moment. That is incorrect. Let me get that again. We have gotten it into Cadillac, now, and we are trying to get it out of Cadillac.

281. Mr. Moberly. The third group.

Mr. CLARDY. Yes.

By Mr. CLARDY:

Q. The fact that there may be a schedule out of Cadillac at 1:30, p. m., getting into Grand Rapids at 7 p. m.—that is right, is it not?

A. Yes.

Q. Would not suggest to you that in all probability the shipment out of Petosky would have to lie over until the next day before it is going to get truck service!

A. (No answer.)

Q. You had not noticed that, had you?

A. Yes, I noticed that.

Q. Do/you have the slightest idea that the business is going to be transferred to the rail at Cadillac?

A. Again, that is a question for the railroad, and I do not run the railroad.

Mr. HARRY YOCKEY. That is the answer, your Honor.

Mr. CLARDY. Yes; unsatisfactory as it may be, that seems to be the situation.

Mr. HARRY YOCKEY. If you will ask Mr. Christie, he will tell you how it will move.

Mr. CLARDY. I will save my fire for him, then, until he gets back here.

Mr. HARRY YOCKEY. All right.

By Mr. CLARDY:

Q. Well, now, Witness, what I have just asked you is typical of the whole exhibit No. 4, is it not?

A. (No answer.)

Q. In other words, that there is a mismatching all the ways through, so that you could not possibly render continuous truck

service because of the fact that the shipment will go to a point where it must be transferred to another truck and have to wait over until the next day?

Mr. HARRY YOCKEY. Well, now, just a moment. I am going

to object to that question.

By Mr. CLARDY:

Q. Is that not true?

Mr. HARRY YOCKEY. Just a moment. As far as any mismatching of service is concerned, there is nothing of the kind in this case. There is no testimony in the record, there is no statement, or anything else, that they ould not be matched at all. It is the purpose to operate the short hauls by truck, and the long hauls by rail.

Mr. EGGERS. Sustained.

Mr. HARRY YOCKEY. There is not any such purpose or intention in this case.

Mr. CLARDY. How is that, your Honor? Mr. Ecgers. The objection is sustained.

Mr. CLARDY. Well-

Mr. EGGERS. I think you are assuming a little too much there, Mr. Clardy.

Mr. CLARDY. I was not assuming anything, your Honor.

I was referring to applicant's exhibit 4 here, and asking him about that. I was not asking him on the basis of any

assumption.

Mr. HARRY-YOCKEY. I think you did.

Mr. CLARDY. You could not have understood my question, your Honor. However, to save time. I will ask it another way.

Mr. EGGERS. All right.

By Mr. CLARDY:

Q. Witness, is there any point north of Grand Rapids from which it would be possible for a shipper to offer freight either to the railroad or to you—that is, The Willett Company of Indiana—or to either of you in combination, that you care to mention, or that you are able to mention, and have that freight handled by your line in continuous journey—that is, from any of these points on that part of the application that I have mentioned, to any point in Indiana on the route north of Fort Wayne?

Mr. HARRY YOCKEY. Just a moment, now. Do you mean by

truck, Mr. Clardy?

Mr. CLARDY. By truck.

Mr. HARRY YOCKEY. Well, now, if the Board please, I want to object to that question. The testimony is very clear in this case, that we are not seeking that authority.

Mr. CLARDY. Well, now-

Mr. EGGERS. Read the question.

Mr. CLARDY. It is not clear at all.

Mr. HARRY YOCKEY. I say it is clear.

284 Mr. EGGERS. Just a moment, gentlemen. Read the question, please, Mr. Reporter.

(Question read.)

Mr. CLARDY. Now, before you answer-

Mr. HARRY YOCKEY. Before they rule, you mean.

Mr. Clarby. I want to point this out, that they have named two key points here, Fort Wayne and Grand Rapids, and I have deliberately picked a shipment north of Grand Rapids, that does not go to any other key point.

Mr. EGGERS. I think the question is proper.

Mr. CLARDY. Sure.

Mr. EGGERS. The objection is overruled, and the witness may answer the question.

The WITNESS. The answer is "no."

By Mr. CLARDY:

Q. No-what?

A. Sir?

Q. Do you mean by that answer, that you could not give continuous, efficient, service? Is that what you mean?

A. We could give a speedy and efficient service, but not a con-

tinuous service; no, sir.

Q. Well, would you regard service that requires at least one or two lay-overs of 24 hours as being a speedy and efficient service?

A. In some cases, yes.

Q. That is, if the railroad was performing the service .

285 it would be, would it?

Mr. HARRY YOCKEY. Well, now, I want to object to the comparative proposition, bringing in the railroad.

Mr. CLARDY. He said, in some cases he would, and I just want to develop what cases he has in mind.

Mr. HARRY YOCKEY. Objection.

Mr. Egger's Overruled.

By Mr. CLARDY:

Q. Can you answer my question?

A. State it again.

Mr. CLARDY. Read it please.

Question read.)

A. I am not employed by the railroad.

By Mr. CLARDY:

Q. Well, if you were performing the service, you would consider that as efficient service, would you!

A. Yes.

- Q. Now, you said something a moment ago to the effect that tonnage did not enter into the picture at all, so far as you were concerned.
 - A. Yes.

Q. Would you tell me what you mean by that?

A. Well, as I stated before, our arrangements with the rail-road have nothing to do with tonnage.

Q. You mean, then, do you, Witness, that regardless of whether there is no freight at all, or 100 pounds of freight, or truckloads of freight, it is all the same to you?

286 A. Yes.

Q. So that if this operation should be carried on, and despite the optimistic predictions of the railroad, the tonnage should be only a fraction of a truckload on each movement, you would still desire the authority, would you?

A. Yes.

Q. Would you, out of your experience as a truck operator of many years standing, consider that an efficient way to operate—basing your answer, now, on the fact that you would only have a fraction of a load each time?

A. If that is the set-up for the service, as far as I am concerned, it is efficient.

Q. That is your idea?

A. Yes.

Q. All right Now, you said, sir—it was either you, or one of the other witnesses, but I think it was you—that you would not accept this famous restriction about a prior and subsequent rail movement. Just what did you testify with respect to that?

Mr. HARRY YOCKEY. Just a moment. This witness has not.

testified regarding that. That was Mr. Christie.

Mr. CLARDY. Well, we have had so many statements about it, that I thought he was the one. However, I might ask him a question about it.

By Mr. CLARDY:

Q. Witness, do you have in mind some particular reason why you, as the applicant, would not desire to accept that restriction?

A. From our present experience, which is all that we have to talk from, or discuss, there are cases where this restriction does work a hardship in that it requires us to backhaul freight, and haul it a lot greater distance.

Q. The tonnage does not make any difference to you?

A. No.

Q. You'said that.

A. Yes.

Q. Does not that backhaul make you more money?

A. No.

Q. It does not?

A. .No, sir; because we operate over the route in both directions, anyway.

Q. Well, then, if you operate over the route in both directions

anyway, how does it inconvenience you?

A. Because it require extra trips, and sometimes it is difficult to get extra equipment to make extra trips.

Q. As a practical matter, now, Witness, in this operation, is

not tonnage, after all, of some importance to you?

A. It is not a factor as far as we are concerned, no, sir, because of the fact that the schedule we have in effect, and the present operation, requires us to make an extra movement.

Q. Well, now, I do not understand what you mean by that.

Will you explain?

A. All of our trucks at the present time are operating on fixed schedules, and we have definite assignments of personnel to those schedules, and we have a very limited backlog of extra personnel to take up any slack that might occur from sickness, accident, or what not. So that when a situation of this kind exists, and we are requested to make an additional trip, due to this "prior or subsequent movement" proposition, which we have in several instances, it requires us to get extra men out to do the work.

Q. Well, now-

A. And that is not in our set-up.

Q. I am still unable, Witness, to see how the "prior or subsequent" proposition makes you employ—or causes you to make the extra trip. Can you explain that to me?

A. Well, we will assume that a truck operates from point A to point B, and that point A and point B are interstate points.

Q. Well, now, let us stick to this Kalamazoo-to-Fort Wayne proposition.

A. All right.

Q. Just to be concrete.

A. All right.

Q. Go ahead.A. Or suppose we say, a point intermediate to Kalamazoo.

Q. All right. You pick your points

A. Just a moment.

289 Q. Three Rivers? A. Sturgis.

Q. Sturgis.

A. Yes.

Q. Very well. That is a good town.

By Mr. EGGERS:

Q. You are talking about Sturgis and Fort Wayne, now, are you?

A. Yes, sir.

Mr. EGGERS. All right.

By Mr. CLARDY:

Q. Go ahead.

A. If we had one truck operating there, operating out of Fort Wayne to Sturgis, and back—do you see?

Q. Yes.

A. And the traffic out of Sturgis, if it was moving in interstate commerce, would have to have a prior or subsequent movement by rail, it would have to be hauled by rail to another freight station, and we would have to go and get it, so that there would be additional traffic over and above the normal traffic that would move out of that station.

Q Do you mean by that; that it would have to be picked up by rail at Sturgis, and move some few miles to another station!

A. Well, I would not say a few miles. I would say, move to another railroad station of transfer point.

Q. Well, now, let me see if I understand you correctly, Witness.

At the present time are you actually picking up freight

290 at some point, we will say, at point A, to use a favorite illustration—

A. Yes.

Q. Just a moment—that originated really at point B, located, we will say, down the railroad line 10 or 15 miles, and that has been moved from point B to point A by rail, in order to get it onto the truck.

A. Well, it is not quite 10 or 15 miles. We have a condition right here in Indiana where we take freight from Brazil, Indiana, for instance, to Martinsville, Illinois, which is just relatively a short distance, just across the Illinois-Indiana state line.

Q. Yes.

A. We have hauled it from Brazil, Indiana, into Indianapolis, and then it is hauled by rail back to Effingham, Illinois, and the truck picks it up at Effingham, and brings it to Martinsville.

Q. And that results in a great delay, does it?

A. Well, that is something else again.

Q. All right. Now, let us be concrete. Where, on this line,

as proposed, would any such situation arise?

A: Well, take the situation between Fort Wayne and the Indiana-Michigan state line, where traffic, interstate traffic, is destined, say, to the state of Michigan. It would have to be backhauled into Fort Wayne, probably, and move by rail into the state of Michigan, and then moved by truck to its destination.

Q. I see. But if the freight, however, were destined to Grand Rapids, Michigan, it would be picked up, would it not, at whatever the Indiana point is, and taken directly to Grand Rapids by your truck?

A. Probably not; no.

Q. I mean, the way you propose to operate.

A. No, sir. We propose to operate from Fort Wayne to Kalamazoo.

Q. Well, then, you have got another key point in there that you have not mentioned before. I thought only Fort Wayne and Grand Rapids were the key points.

A. (No answer.)

Q. Well, at any rate, then, to shorten it. Witness, that is the only explanation that you have to give, is it?

A. Yes.

Q. And that is the only reason that the applicant has in mind, as to why it does not want that restriction; is that correct?

A. Yes.

Q. There is nothing else that enters into it?

A. No.

Q. It is wholly a question of the rail having to move it, in order to get around the restriction.

A. And serving our customers better.

Q. Do you have any idea as to whether the customers could get better service if they used some independent truck line?

Mr. HARRY YOCKEY. Just a moment.

292 A. I don't know.

Mr. HARRY YOCKEY. Just a moment, please. I want to object to that, if the Board please. That is not involved in this case. This is Pennsylvania Railroad freight that he is testifying about, and as to what freight might move on some other independent line, does not have anything to do with this case, as far as any prior and subsequent movement by rail is concerned, as far as that clause is concerned. This is railroad freight, and it is moving by rail. Counsel is getting into something now that is beyond the issue here.

Mr. Clardy. Well, if public convenience and necessity is not involved here, possibly we are.

Mr. EGGERS. Just a moment, gentlemen. Let me hear the question again, please, Mr. Reporter.

(Question read.)

Mr. CLARDY. · He answered the question.

Mr. HARRY YOCKEY. No.; he did not.

Mr. Eggers. Did he answer it, Mr. Reporter?

(Answer read.)

Mr. Ecgers. I did not know that he had.

By Mr. CLARDY:

Q. Do you also have any present knowledge as to what points on the proposed routes as set forth in applicant's exhibit No. 2, are presently receiving pick-up and delivery service by some other carrier?

Mr. HARRY YOCKEY. Do you mean beside the Pennsylvania Railroad?

Mr. CLARDY. Yes.

A. I do not know what points are getting pick-up and delivery service.

By Mr. CLARDY:

Q. You do not have any idea?

A. No.

Q. You would not know, then, whether or not you are going to be substituted for another carrier along that route, would you?

A. No.

Q. Particularly, now, directing your attention to the route between Muskegon and Grand Rapids, Michigan, do you have any present knowledge of the number of common carriers that are operating between those two points?

A. No.

Q. You do not?

A. No. sir.

Q. And is your knowledge equally deficient with respect to the service which is presently available by such carriers, between all

of the other points set forth in the application?

Mr. HARRY YOCKEY. Well, now, just a moment. I object to that if the Board please. This man is a representative of the trucking company, appearing for the trucking company here, that is seeking to get this authority, and what difference does it make

as to what other companies may be doing, as far as this application is concerned?

Mr. Clardy. Let me say-

Mr. HARRY YOCKEY. What difference does it make whether or not he has made an investigation of what other truck lines may or may not be doing, as far as this truck line itself is concerned! This is the only truck line that is involved here.

Mr. EGGERS. The objection is overruled. If the witness knows he may answer.

Br. Mr. CLARDY:

Q. If you cannot answer the question, Witness, you may say so.

A. I don't know how many there are.

Q. How is that?

A. I say, I don't know how many there are.

Q. And you would not know the number that are offering service between any points on any of this extension application, would you?

A. No.

Mr. CLARDY. That is all I have.

Mr. Ecgers. Is there any further cross-examination of Mr. McArdle?

Mr. King. I have just two or three questions, if your Honor please.

Mr. Eggers. Go ahead, Mr. King.

By Mr. KING:

Q. I balieve you stated, Mr. McArdle, that you either prepared or directed the preparation of the application that is now on hearing here; is that correct?

.A. Yes, sir.

Q. Will you turn, please, to exhibit C, in the application.

A. Exhibit C?

Q. Yes.

A. Yes, sir.

Q. Do you have that before you!

A. Yes.

Q. Refer to paragraph (b) of exhibit C.

A. What paragraph?

Q. Paragraph (b).

A. Tes.

Q. In that paragraph we find the following statement: "Applicant has no knowledge of any other motor carrier operating in the territory covered by this application, with whose operations the service herein proposed would be competitive."

Mr. HARRY YOCKEY. Well, now, just a moment. I object to

that question. Mr. Clardy has already gone into that.

Mr. Moberly. There is no question as yet.,

Mr. EGGERS, No.

Mr. King. No; I merely asked him if he had made any investigation, and he said no.

Mr. EGGERS. They may ask him as to his application.

Mr. HARRY YOCKEY. All right.

By Mr. KING:

Q. The statement that I have just read appears in that paragraph of exhibit C; does it not?

A. Yes, sir.

Q. Assuming that the Norwalk Truck Line Company operates between Fort Wayne, Indiana, and Sturgis, Michigan; would you say that this service which you now propose would not be in any way with that service?

A. Yes, sir.

Q. Would the service of The Pennsylvania Railroad, through you, or that is, through The Willett Company of Indiana, be competitive with the service of the Norwalk Truck Line Company!

A. Not to my knowledge; no. Q. That is your opinion, is it?

A. Yes.

Q. And that statement would be true also with respect to any other motor carrier operating over the routes proposed in this application, would it?

A. Yes. "

Q. In your opinion—or rather, first, let me ask you, how long have you been in the motor-carrier business, Mr. McArdle—in the trucking business?

A. About 22 years.

Q. Will you state that in your opinion as a motor-carrier operator, the institution of the motor service such as is proposed here would not in any way be competitive with the service of other motor carriers over the same routes, and between the same

A. Yes.

points?

Mr. KING. That is all.

By Mr. CLARDY:

Q. Witness, why do you say that?

A. Because I know of no carrier that is serving all of the points on each of these routes.

Q. Well, are there carriers that serve any of the points !

A. Probably.

Q. Well, then, you do know that there are some carriers operating there, do you not?

A. I don't know who they are. That is, I have seen their trucks, but I don't know who they are.

Q. Well, between Fort Wayne and Grand Rapids you know.

that there are capriers operating, do you not?

Mr. HARRY YOCKEY. I want to object, if the Board please, on the ground that the witness has already answered that question. Why should we waste any time having it asked over again? Mr. CLARDY. No; not this question. The witness says now he knows that there are some motor carriers operating in there:

Mr. Eggers. This question applies specifically between Fort

Wayne and Grand Rapids, does it? .

Mr. CLARDY. Yes.

Mr. EGGERS. If the witness knows, he may answer.

By Mr. CLARDY:

Q. Do you understand the question?

A. Say it again.

Mr. CLARDY. Read it, please. (Question read.)

Mr. BARKELL. That is the question.

A. No.

By Mr. CLARDY:

Q. What points, then, did you have in mind, Witness, that you said you did know they were serving?

A. On my trips up into Michigan, I have seen their trucks. I don't know what points they were operating to or from, but I

have seen their trucks, is all.

Q. Well, assuming that there are some motor carriers operating there, then my question is the same as I asked you a moment ago: why would not the service which you propose be in any sense competitive with the service of those carriers between those same identical points?

A. First of all, because I don't know of anybody who performs

this same type of service that we perform; and secondly-

Q. What do you mean by that?

A. Sir?

Q. Just explain that answer, as you go along.

A. Well, we operate from station to station on the Pennsylvania Railroad.

Q. That is all you mean, by that, is it?

A. Yes, sir.

.Q. All right. Now, what is the rest of it?

A. Secondly, I don't know of any other operator that

299 serves all of the points on these routes.

Q. I only took two points. We will take any two given points, where we know that there is service, for the purpose of my illustration.

Mr. Harry Yockey. You are asking this witness about some

thing now that he does not know.

Mr. Eccess. The question is a hypothetical question, Mr. Yockey.

Mr. HARRY YOCKEY. Yes.

Mr. Moberly. The question is as clear as a bell.

A. Well, I don't know.

By Mr. CLARDY:

- Q. Do you know of any point on this entire route, Witness, that is not presently being served by motor carrier service?
 - A. No.
 - Q. How?
 - A. I wouldn't know.
- Q. Then, I will ask you this question: Have you completed all of your answer with respect to why there would be no competition existing?
 - A. My original answer was completed, yes.
 - Q. It is all complete?
 - A. Yes.

Mr. CLARDY. Thank you.

Mr. Eggers. Is there any further cross-examination of this witness? (No response.) Is there anything on redirect, Mr. Yockey?

Mr. Moberly. There may be some further cross-examination tomorrow, your Honor, relative to the financial statement, of which counsel for protestants have not as yet received copies.

Mr. CLARDY. Yes.

Mr. Eggers. That is correct. Other than that, though, I take it, apparently there will be none. Is there any redirect examination, Mr. Yockey!

Mr. YOCKEY. I think not.

Mr. Eggers. Very well, then. You are excused.

(Witness excused.)

Mr. Eccers. At this time we will adjourn until tomorrow morning at 8:30.

(At 6:20°p. m., February 10, 1942, hearing adjourned until 8:30 a. m., February 11, 1942.)

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STATE HOUSE,

Indianapolis, Indiana, February 11, 1942.

Met, pursuant to adjournment at 8:30 o'clock a. m.

Before Joint Board No. 23, represented by Richard H. Barkell, Michigan; Oliver H. Eggers, Indiana.

Present : REECE HARRISON, Examiner.

Appearances: As heretofore noted.

PROCEEDINGS

Mr. BARKELL. Come to order, please, gentlemen. Now, Mr. Yockey, what procedure do you want to follow here this morning? Would you like to start putting on your shipper witnesses at this time?

Mr. HARRY YOCKEY. Yes.

Mr. BARKELL. In order to let them get away.

Mr. HARRY YOCKEY. Yes, sir. However-

Mr. BARKELL. Or just what procedure do you desire to follow?
Mr. HARRY YOCKEY. I think we would prefer to start, at least, with our shipper witnesses this morning, your Honor.

Mr. BARKELL. All right.

Mr. HARRY YOCKEY. If that is agreeable to the bench and the parties.

Mr. BARKELL Is there any objection to following that proce-

Mr. DES ROCHES. That is perfectly all right with me.

Mr. Clardy. If that will accommodate them, that is perfectly all right.

Mr. DES ROCHES. Anything to "expedite" the matter.

Mr. CLARDY. If we may borrow that phrase.

Mr. BARKELL All right. You may call your next witness,

please, Mr. Yockey.

Mr. HARRY YOCKEY. Your Honor, I think that these witnesses have not been sworn. Do you want to swear them all at once?

Mr. BARKELL. Has this first witness been sworn?

Mr. HARRY YOCKEY. No.

CLAUDE H. CATON was sworn and testified as follows:

Direct examination by Mr. HARRY YOCKEY:

Q. Mr. Caton, you may state your full name to the Board, please.

A. Claude H. Caton.

Q. Where do you live?

A. Lagrange, Indiana.

By Mr. Anderson:

Q. Where?

A. Lagrange, Indiana.

Q. Where is Lagrange?
A. The county seat of Lagrance County, in the northern tier of counties, in the state.

By Mr. HARRY YOCKEY:

Q. Is that north of Fort Wayne-

Mr. Eggers. Just a moment, please. I still do not get the name.

Mr. BARKELL. Talk a little louder, please.

The WITNESS. Caton.

By Mr. CLARDY:

Q. Let us have your full name again, will you, please, Witness.

A. Claude H. Caton.

Mr. BARKELL. Proceed.

By Mr. HARRY YOCKEY:

Q. Now, is Lagrange, Indiana, on the Pennsylvania Railroad!

A. Yes.

Q. Is it north of Fort Wayne?

A. Yes, sir.

Q. In what business are you engaged?

A. Furniture and undertaking.

Q. What is the name of your firm?

A: Caton Brothers.

Q. Are you one of the partners in the business?

A. I am.

Q. Mr. Caton, have you had explained to you what this particular type of service is, that is being sought here?

A. Why, in a roundabout way, I would say, it has been talked about; yes, sir.

Q. Have you had it explained to you that there is sought here to transfer—or rather, I should say, to substitute a motor carrier service along this particular segment of the railroad that you are located on?

A. Yes.

Q. And has it been explained to you that it is proposed to operate a truck from Fort Wayne, Indiana, to Kalamazoo, Michigan, in station-to-station all-rail service, for less than carload freight!

A. Yes, sir.

Q. Has it also been explained to you that by doing that, there will be an expedition of at least 24 hours in the movement of your freight?

A. Yes, sir.

Q. Well, now then, are you acquainted with the inbound and outbound shipments of your company in your business?

A. (No answer.)

Q. That is, over the Pennsylvania Railroad?

A. I do not quite understand.

Q. Well, then, let me put the question this way: do you have occasion to ship over the Pennsylvania Railroad, or to receive shipments over the Pennsylvania Railroad?

A. Yes, sir, we do, although I might say, we receive more shipments than we send out. We do very little shipping

Q. But you do receive shipments over the Pennsylvania Rail-road?

A. Yes, sir.

Q. For how long a time have you been receiving such shipments?

A. 30 years.

Q. Where do your shipments come from?

A. Oh, they come from a great many points—well, I would say, the points are almost numberless, that they come from I don't know that I could enumerate them all, by any means. Some come from Indianapolis, Indiana; some come from Richmond, Indiana; some come from Cincinnati; and some come from the southern states.

Q. Do you get any from Chicago?

A. Yes, sir, we get some shipments in from Chicago; and we also have some shipments that come in from Grand Rapids and Detroit.

Q. Well, now, Grand Rapids and Detroit are in Michigan.

A. Yes.

Q. Now, then, excluding the shipments from Indianapolis as not being involved here, because Indianapolis is in Indiana—you understand?

A. Yes.

Q. And we want your answers to go only to interstate commerce, that is, from points outside the state of Indiana—

A. I see.

Q. Do you have any shipments that come into you from Chicago?

A. Yes.

Q. Of what do those shipments consist?

A. Caskets and furniture.

Q. And how do you receive such shipments?

A. Well, they generally do not come in at regular intervals.

Q. Will you describe how they do come.

maybe we will get an order in maybe one week, and then maybe we will skip a week, or two weeks, or something like that; or maybe we will get in one order in between there.

Q. Well-

A. It is kind of hard to answer a question of that sort exactly, you understand, unless a man would go and check on his books.

Q. Well, just speaking generally, would you say you get as many as one a week?

A. Oh, yes.

Q. And what will be the average weight of the particular shipments that you get in from Chicago?

A. (No answer.)

Q. That is, approximately. I am not trying to pin you down here to any exact figures.

A. Well, if we buy a suite, it will probably run from 400 pounds

to 500 pounds, or maybe 550 pounds.

Q. Consisting of what commodities again?

A. How?

308 Q. Is that furniture and caskets?

A. No.

Q. What is that?

A. That would be a bedroom suite.

Q. Now as to Detroit: how frequently do you receive shipments from Detroit—and when I ask you that, I mean over the Penasylvania Railroad in less than carload quantities?

Mr. Anderson. Now, just a moment. To which we object, if the Board please, on the ground that that is not involved here. That

is going beyond the issues.

Mr. BARKELL. Where is Detroit involved in this application, Mr. Yockey!

Mr. HARRY YOCKEY. Pardon me?

Mr. BARKELL. Just how is Detroit involved in this application?

Mr. HARRY YOCKEY. He is in Indiana.

Mr. Anderson. That is correct, but then, Detroit is not on this route here.

Mr. HARRY YOCKEY. Well, but it comes via the Pennsylvania Railroad.

Mr. Anderson. But what does that have to do with any issue here! Chicago, about which you first asked him, has nothing to do with the issue here. They already have authority to give service from Chicago.

Mr. HARRY YOCKEY. He is on this particular route from 309 Fort Wayne; that is, the freight from Detroit comes down to Fort Wayne, and then goes up to his place. The freight from Chicago come from Chicago over the Pennsylvania Railroad to Fort Wayne, and then goes up to his place.

Mr. Anderson. Is that true also in the case of Detroit, did you

say!

Mr. HARRY YOCKEY. Yes.

Mr. Anderson. And it goes to Fort Wayne first?

Mr. HARRY YOCKEY. Yes,

Mr. ANDERSON. And then goes to his town?

Mr. HARRY YOCKEY. Yes, it comes into Fort Wayne first, and then goes up to his place.

Mr. Anderson. Well, all right.

Mr. BARKELL. The objection is overruled, then.

Mr. Anderson. That is all right.

Mr. CLARDY. I do not think it is material, either, your Honor, but maybe it would be grist for our mill, so I am not going to object.

Mr. HARRY YOCKEY. Oh, it probably will be grist for your mill, yes.

By Mr. HARRY YOCKI

Q. The question was, Mr. Caton, how frequently do you receive your shipments from Detroit?

A. Well, now, I believe I would be safe in saying one a week.

Q. Once a week?

A. Yes, sir.

310 Q. And what is the usual weight of those shipments?
A. (No answer.)

Q. Approximately will do.

A. Well, they will run, I would say, from occasional chairs up to refrigerators. That will give you some idea.

Q. Consisting of what?

A. How?

Q. Those shipments from Detroit, consist of what?

A. Well, they will run in weight from a low of possibly 35 pounds up to 250 or 300 pounds.

By Mr. CLARDY:

Q. What was that latter figure?

A. Pardon me?

Mr. CLARDY. Read the answer, please.

(Answer read.).

The Witness. From 30 to 250 pounds, up to possibly 400 pounds, I would say.

By Mr. HARRY YOCKEY:

Q. Now, from Grand Rapids, when do you receive those shipments?

A. When?

Q. I mean, how frequently do you receive them?

A. I would imagine about the same.

Q. Once a week?

A. Yes, sir.

Q. And about what would be—or what is the average weight of those shipments?

311 A. 150 pounds.

Q. Of what do they consist?

A. Caskets and furniture.

Q. Now, did you also say that you receive shipments from Cincinnati, Ohio!

A. Yes, sir.

Q. How frequently do you receive those shipments?

A. Not very often.

Q. Well, how often?

A. Well, that is a little bit hard to say. Probably one every two months, I guess.

Q. All right. And the average weight of those shipments is what?

A. Oh, those particular shipments will run from around 250 rounds up to about 400 pounds, I should judge.

Q. Are those caskets?

A. Yes, sir.

Q. Now, do you have any shipments coming in from points in the state of North Carolina?

A. Yes, sir.

Q. From how many such points?

A. Well, now, let me see. There would be about four or five points, I should say.

Q. And how frequently do those shipments come in to you.

from North Carolina points!

A. Oh; I would imagine about two a month.

312 Q. About two a month?

A. Yes ...

Q. And the average weight of those shipments is what?

A. From 400 pounds to 500 pounds.

Q. What do they consist of?

A. Oh, armchairs and dining room furniture.

Q. Well, now then, if this particular rail-truck service is instituted, and if it will expedite the movement of your freight by 24 hours, will that be of any benefit to you in your business?

A. No doubt.

. Mr. BARKELL. What is the answer?

A. Yes.

By Mr. HARRY YOCKEY:

Q. And will that serve the convenience and necessity of your particular business?

A. It will help us, I think; yes, sir.

Q. If that service is instituted for The Pennsylvania Railroad by The Willett Company, will your company continue to use the Pennsylvania Railroad rail-truck service!

A. (No answer.)

Q. I mean, will your company continue to use the Pennsylvania Railroad, and avail itself of that service?

A. Why, yes, sir; we will—as much as we ever have, at any rate, I would say.

Q. You would like to have that service, would you!

A. Yes, sir; I really think I would.

Mr. HARRY YOCKEY. That is all.

Mr. Barkell. Cross-examine. _ .

Cross-examination by Mr. Anderson:

Q. I am sorry, Mr. Witness, but I did not just get your business. Undertaking and—what?

A. Furniture.

Q. Undertaking and furniture?

A. Yes, sir. We have a combination business there. We are in the undertaking business, and we are also retail furniture dealers.

Q I see. Now, you have been using the Pennsylvania Railroad service, I believe you testified, for 30 years or thereabouts;

is that correct?

A. Yes

- Q. How long, if you know, and if at all, have you been using any Willett Company service—Willett Trucking Company service!
 - A. Willett Trucking Company?

Q. Yes.

A. Why, I don't remember of ever having used any service of The Willett Company.

Q. You do not know that you are using it now?

A. No.

Q. It is the service of the Pennsylvania Railroad, as far as you are concerned, is it!

A. Well, I don't know-

Mr. HARRY YOCKEY. Pardon me, Mr. Anderson, but there is nothing in the evidence to indicate that he has been using it.

A. (Continuing.) I don't think that they make Lagrange. That is, I don't believe that The Willett Company makes Lagrange. Maybe it does. I wouldn't say positively about it. I don't think it does.

By Mr. ANDERSON:

Q. Do you know anything about The Willett Company?

A. No. sir.

Q. You do not know anything about any connection that they might have with the Pennsylvania Railroad, then?

A. No.

Q. You are receiving your shipments that come into you from Carolina points by The Pennsylvania Railroad satisfactorily, are you not?

A. Yes.

Q. You do not have any complaint to make about that service. do you?

A. Well, if they didn't bust so darned much of our stuff up, I wouldn't have any complaint, no.

Mr. HARRY YOCKEY. Just a moment, please. I could not hear

that answer. Will you say that again?

The Witness. I say, if they didn't bust up so darned much, there wouldn't be any complaint. That is the only thing, that is the only complaint.

By Mr. ANDERSON:.

Q. Yes.

A. But then, I suppose you would have that same difficulty with any railroad system. I don't know.

Q. I suppose. I take it that The Pennsylvania Railroad is not

any worse in that regard than any other railroad.

A. No.

- Q. As far as the time element is concerned, they bring your shipments in by rail from the Carolina points promptly, do they not?
 - A. Oh, I suppose they do, yes, sir.

Q. Well, do you know-

A. We never have used any other service, so I don't know. I

suppose so, though.

Q. So that whether The Willett Company, the applicant in this proceeding, is ever authorized to render the service asked for between Fort Wayne and Lagrange, Indiana, or not, your furniture would still come in from the Carolina points direct to Lagrange by the Pennsylvania Railroad, would it not?

A. Why, yes, sir, I assume that it would-unless, of course, they

changed their system.

Q. So that it would not help you any there, would it?

A. (No answer.)

Q. How?

316 A. Well, I don't know.

Q. Now, as to Detroit, these shipments which you get about once a week, that weigh from about 35 pounds up to 250 pounds: do those shipments come into you from Detroit by the Pennsylvania Railroad?

. A. Yes, sir; if they come in by rail.

Q. Pardon me?

- A. If the stuff comes in by rail, yes, sir, it comes over the Pennsylvania Railroad.
- Q. Well, that freight usually comes in by truck, though, does it not?

A. Some of it.

Q. Some of it!

A. Yes.

Q. What truck line?

A. Oh, various lines.

Q. What are some of them?

A. Well, now, let me see. There is O. I. M. Transport Corporation; there is Matthias; and Mills.

Q. And that is all good service, is it not?

.A. (Nodding head "Yes.")

Q. What is the answer?

Mr. BARKELL. You will have to speak up.

Exam. HARRISON, Speak out, so the Reporter can get it into the record.

317 A. I am sorry. Yes, sir—as well as can be expected, I imagine.

By Mr. Anderson:

- Q. Referring to O. I. M. Transit Corporation, one of the protestants in this case: you have used their service regularly, have you!
 - A. Yes, sir.
- Q. You have no complaint to make against the service that has been rendered you by O. I. M., have you?

A. No.

- Q. Now, you use what other carrier or carriers, did you say, from Detroit!
- A. Well, we don't use them, you understand. It just depends on the way the shipments happen to be billed into us, out of Detroit.
- Q. But what were the other carriers that you mentioned a moment ago? Did you say Mills?
 - A. Matthias and Mills.
 - Q. Matthias?
 - . A. Yes.
 - Q. And Mills?
 - A. Yes, sir.
- Q. All right. Now, as to Cincinnati, Ohio, that is out, I take it, because The Willett Company would not operate out of Cincinnati.

. A. Probably not.

- Q. You receive shipments via The Pennsylvania Railroad from Cincinnatr about once a month, did you say?
 - A. Well-

Q. Or every two months?

A. Yes, sir; that often, anyway

Q. And that is as good a service, now, is it not, that you find necessary in your business?

A. Yes, I would say so.

- Q. Now, as to your Grand Rapids, Michigan, shipments: you receive about 150 pounds, once a week, from Grand Rapids; is that correct?
 - A. Yes.
 - Q. How are you getting them now?

A. Pennsylvania.

Q. Pennsylvania Railroad?

A. Yes, sir; I would imagine.

Q. And that service is satisfactory, is it?

A. Why, yes.

Q. In other words, then, with the service which you are receiving at the present time, both from the Pennsylvania Railroad, as it is now operating, and from the various trucking lines that are serving you, I take it that your transportation needs are adequately served, are they not?

A. As best I know.

Mr. ANDERSON. That is all.

319 A. (Continuing.) That is, I would qualify that, if I may—

By Mr. Anderson:

Q. Yes!

A. Unless they could improve on the service in some way or other, of course.

Q. Well, but you have made no complaint—or you have no complaint to make about any of these services, have you?

A. No.

Q. And they are satisfactorily meeting your needs, are they not, in that you have lost no business—have you?

A. (No answer.)

Q. I mean, by reason of your transportation facilities.

A. No.

Q. Your business is growing, in other words, and increasing right along, is it not?

A. Well, a little.

Mr. Anderson. Thank you.

By Mr. CLARDY:

Q. Witness, do you have any knowledge of how The Pennsylvania Railroad Company handles any shipments that you may receive from Chicago?

A. From Chicago?

Q. Yes.

A. Why, no, sir, I can't say that I have, although I have always supposed that they came direct over the Pennsylvania system.

Q. Well, by my question I am merely seeking to find out if you know through what points your shipments may travel in coming to you from Chicago when the Pennsylvania system is used?

A. No, sir; I do not. As I say, I always supposed that they came by way of Fort Wayne, but that is merely a supposition on my part. I do not know.

Q. Well, now, in connection with the movements which come into you from Chicago; are they all exclusively handled by the Pennsylvania Railroad?

A. Exclusively?

Q. Yes.

A. Well, now, as far as that is concerned-well, I couldn't answer that question.

Q. Do you know?

A. No, sir; I wouldn't be able to tell you, although I have always supposed that they were.

However, you have never checked up-

A. No.

Q. To see whether or not that is the fact?

A. No. sir.

Q. Have you ever received anything from Chicago by way of any motor carrier?

A. Motor carrier?

Q. Yes.

A. Why, yes, sir; we have received some, but not very much, I would say.

Q. Not what?

321 A. Not very much.

Q. Can you recall whether those shipments were routed by you, or by the shipper at Chicago?

A. By the shipper at Chicago.

Q. Do you recall the name of the carrier, or carriers that furnished that service?

A. No.

Q. Do you know whether or not that operation was one passing through Fort Wayne, or did it come through some other route, or via some other route?

A. Well, I wouldn't imagine that it would come through Fort

Wayne, that particular movement; no, sir.

Q. Because that would be out of the way?

A. Yes, sir.

Q. Do you know, or do you recall anything about the time element involved in getting those shipments to you by truck line from Chicago?

A. The time in transit?

Q. Yes.

A. Why, yes, sir. It is a little bit slow-if that is what you are driving at.

Q. How slow is it as compared with the rail service by way of Fort Wayne?

A. I think it is slower.

Q. Slower than the rail service?

322 A. Yes. .

Q. How many days are consumed by rail?

A. I would say about three days.

Q. From Chicago!

A. Yes, sir.

Q. Now, can you recall precisely how many days were involved

in getting those truck shipments in?

A. Well, it was several days, although I wouldn't be able to give you the exact time, because I know that we were very anxious for the goods, and in some way or other, they got mixed up in transfer, and they did not come by way of the direct line, but they came into South Bend, and they were transferred to one of the other lines, or else they just laid over there, or something, and we had to follow the shipment up. But to give you the exact time it took en route, I wouldn't be able to do that.

Q. Well, then, you would not recall at this time whether that exceeded three days or not, would you?

A. Well, I know—at least, I believe I would be safe in saying that it was considerably over that; yes,

Q. Considerably over that.

- A. Several days over that.
- Q. That is, over three days.

A. Yes, sir.

Q. Now, that was the only shipment that you ever had by truck from Chicago, was it?

323 A. Oh, no.

Q. Oh, you have had other shipments!

A. Yes, sir.

Q. Well, then, what is the normal truck time on shipments moving by truck from Chicago to your town?

A. I would say, about three days.

Q. About the same as the railroad time?

A. Yes.

Q. What carrier furnishes that kind of service?

A. Matthias and Mills.

Q. Do they operate directly from Chicago?

A. They operate out of South Bend, Indiana. I believe that their headquarters are in South Bend.

Q. Is there any line, any truck line, that operates out of Chicago or rather, are you familiar, Witness, with the truck lines, so that you can tell me whether or not there is any carrier operating out of Chicago directly into South Bend on its own route!

A. I don't know that.

Q. Pardon me?

A. I don't know what the routes are; that is, I don't know what the lines are running from Chicago to South Bend.

Q. You have not made any investigation into that subject, have you?

A. No.

Q. All right. Now, with regard to shipments coming 324 to you from Detroit, Michigan, you do know that O. I. M. Transit Corporation has served you from Detroit; is that correct?

A. Yes, sir.

Q. And I believe you also mentioned some other carrier as bringing you shipments from Detroit. Who was that?

A. From Detroit?

Q. Yes.

A. Well, sometimes they change them, you understand, and they ship them to South Bend, Indiana, from Detroit, and then they double back—or comething like that.

Q. O. I. M. does not do that, though, does it?

A. No.

Q. Well, what is the other earrier, or who is the other carrier. that you named a moment ago, that operates out of Detroit!

A: Well, I don't know just exactly who does operate out of Detroit, but the Mills people pick it up at South Bend-that is, either the Mills people, or the Matthias people, and double back with it.

Q. That is, at your suggestion?

A. Oh, no.

Q. That is done by the shipper?

A. Yes.

Q. You have never suggested to the shipper that he route his shipments by some line that comes in directly, have you!

325 A. Yes.

Q. But the shipper still insists on using Mills, or this other carrier?

A. Some of them do; yes.

Q. Wellanow, when you have a load that is handled for you by O. I. M. Transit, how long does it take to get your freight from Detroit?

A. Oh, I would say, perhaps two days.

Q. Two days? A. Yes.

Q. And how long-does it take you to get your freight when it comes via the Pennsylvania Railroad?

A. (No answer.)

Q. Or do you know that?

A. No, sir; I don't know that, and I have never checked up on it to see.

Q. Well, you appreciate the fact, I take it, Witness, that if the freight comes in by railroad, it travels a considerable distance further, do you not?

A. Why, I wouldn't say that; no, sir. The O. I. M. Transit takes the shipments into Fort Wayne, and then it doubles back, as I explained to you a minute ago, to Lagrange out of Fort Wayne.

Q. They do not pass through Lagrange?

A. No.

Q. Except in one direction?

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A. That is all.
Q. Are you sure of that?

A. Why, I think I am, yes, sir; as a matter of fact, I am quite positive of it.

Q. Do they maintain any facilities in the way of a terminal, or anything else, at your town?

A. Oh, they have a distributor there.

Q. An agent?

A. Yes, sir—well, now, I don't know whether you would call him an agent or not—but they unload their freight, their local freight, at his dock there.

Q. I see.

A. And he distributes it around the town to the various merchants in the town there.

Q. All right. Now, you said something, I believe, about shipments, from Grand Rapids, Michigan.

A. Yes.

Q. Those shipments are being handled exclusively by rail at the present time, are they?

A. Yes.

Q. Has the railroad company given you any explanation as to how they would handle a shipment from Grand Rapids, if this application were to be granted?

A. No.

Q. It has not?

A. No. sir.

Q: You do not know, then, whether or not the granting of this application would affect your movement from Grand-Rapids, do you?

A. No.

Q. Do you know whether or not the granting of this application will actually affect your movement from Detroit! A. Why, no, sir, that is, naturally, from an actual standpoint, I wouldn't be able to say that right now.

Q. Do you know whether or not it will have any affect at all

upon your movement from Chicago?

A. No.

Q. Or from any other point?

A. No.

Q: Now, Witness, as I understand it, you do not ship anything out-bound from Lagrange; is that correct?

A. Well, very little. Just little, small shipments would be

all: practically nothing.

Q. It has been a long time since you have had anything moving out-bound; has it not?

A. Yes.

- Mr. HARRY YOCKEY. Now, just a moment. I want to object, if the Board please. Counsel is getting into a field now that I did not explore on the direct examination of this witness at all.

If he wants to develop it for us, that is all right, but since we did not go into it, I do not think he should take,

up time with it now.

Mr. Clardy. Well, you did develop, I think, all that is necessary in this particular connection. He says he does not do very

much shipping out-bound.

The WITNESS. That is correct, just a very few. There would be just a few little minor shipments out. If there is somebody going to ship some household goods, and he hires us to crate them, and ship them out, why, occasionally we will do that.

By Mr. CLARDY:

Q. That is true only on very rare occasions, is it not?

A. Yes.

Q. Now, Witness, you said something about the railroad busting up your furniture—or your shipments, I believe.

A. Yes.

· Q. Would you just go into, a little bit more detail for us in that connection. What do you mean by that?

A. I mean by that, that the help is careless. It is not the fault

of the railroad, I would say.

Q. Do you mean it is the employees?

A. Yes, sir.

Q. Well, the employees really constitute the railroad, do they not?

A. Well, I don't know just how you would consider that:

329 I could not answer that question.

Q. Well, at any rate, Witness, the employees of the rail-road, you say, are too careless in the handling of your merchandise; is that right?

A. Why, some of them, at least, are; yes, sir. Some of them are very careless with it.

Q. So that the furniture arrives with the crates broken, does it!

A. Some of it.

Q. And the furniture is scratched and damaged; is that what you mean? .

A. Some of it, yes, sir.

Q. And how about the caskets that you mentioned; do they occasionally damage those also?

A. Well, sir, as far as the caskets are concerned, we have never

had one damaged, that I know of.

Q. Is that because they are crated so well-

A. I guess so.

Q. And it is difficult to damage them?

A. Yes, sir.

Q. Well, now, Witness, do you have any idea that the granting of this authority will reduce the busting-up of your furniture, as you describe it?

A. I could not answer that question.

Q. You do not know?

A. No.

Q. Do you have the knowledge that if this affects you in any way, it will involve a transfer of the merchandise from a car to a railroad dock, and then from a dock into at least one truck ?

A. (No answer.)

Q. Do you know that?

A. No, sir: I don't know how it would be handled.

Q. Would it be your judgment that the more transfers there are en route of the merchandise, the greater the possibility, or chance, of busting-up your furniture?

A. How is that again?

Mr. Clardy. Read it, please.

(Answer read.)

A. No.

By Mr. CLARDY:

Q. Oh. You think, then, do you, the more transfers there are en route, the less chance there is of busting-up the furniture?

A. No, I wouldn't say that, either.

Q. Well, do you think that would have any effect at all on the

possibility of damage to your shipments?

A. Well, I will answer the question this way, I will make this statement, that if your shipments are handled directly by the railroad all the way through, and you happen to have a damage claim, you will be much more apt to get a quicker return from

handling your damage claim with the one claim department, than you will be if you have to go through two or three trucking companies with it.

Q. Have you been having claims with the railroad right along?

Q. To a considerable amount

A. Well, in a great many instances our claims will amount to

Q. Now, do you know at present time anything about the identity and the number of motor carriers that are operating between Grand Rapids, Michigan, and your town of Lagrange, Indiana?

A. No.

Q. Have you ever used the service of any motor carrier operating between those two points?

A. Not to my knowledge.

Q. You do know, however, do you not, Witness, that there are motor carriers operating between those points?

A. Well, I have always supposed that there were, yes, sir. I imagine that there are carriers serving Grand Rapids.

Q. But you have not checked to discover that!

A. No.

Q. Was that because the type of service which you are receiving and have been receiving from the railroad, was good enough to take care of your needs?

A. Yes, sir.

Q. And with respect to the truck lines that are operating from the other points which you named, Chicago, Cincinnati, and Detroit: do you know anything about the identity and number of motor carriers operating between those points and your town?

A. Well, new, I am not positive about it, but I have always understood that the O. I. M. Transit was the only one that had a franchise for local stops. Of course, there are other lines going through there both ways, but I am not just familiar with the trucking situation .: .

Q. I see. You have made no investigation, I take it-

Q. To discover that fact?

A. No; I haven't.

Q. And is the reason why you have not made such an investigation there the same as you stated in the case of Grand Rapids?

A. Yes.

Q. That is, because you have been satisfied with the kind of service which you have been receiving from the railroad company?

A. Yes, sir.

Mr. CLARDY. That is all.

Mr. BARKELL. Are there any further questions of the witness? Mr. DES ROCHES. I have one or two questions, your Honor.

By Mr. DES ROCHES:

333 Q. Mr. Witness, who asked you appear here today?
A. (No answer.)

Q. Was it a representative of The Willett Company, or of The Pennsylvania Railroad Company?

A. I don't know.

Q. You do not know?

A. No, sir, I don't know who he was—that is, there was a gentleman interviewed me, but I don't know who he represented; whether he represented the railroad company, The Pennsylvania Railroad Company, or The Willett Company,

Q. Who was that gentleman?

A. I say, I don't know who he was.

Q. Do you know his name?

A. I have forgotten his name.

Q. Is he here today?

A. Christie, I believe.

Mr. BARKELL. Mr. Christie?

Mr. HARRY YOCKEY. Christie?

The WITNESS. Yes; that is right.

By Mr. DES ROCHES:

Q. The gentleman who testified here?

Mr. CLARDY. The witness who was on the stand yesterday. The WITNESS, I guess so.

By Mr. Des Roches

Q. Did you state that The Willett Company has an agency in your town?

A. No.

334 Q. Has it?

A. Not that I know of.

Q. Not that you know of?

A. No.

Q. Now, at the present time, with the motor-carrier service that you are receiving, you are getting a store-door delivery, are you not?

A. Yes.

Q. What representations, or what promises, if any, has The Willett Company made you in connection with store-door delivery?

A. (No answer.)

Q. Let me put the question to you this way: do you understand that you are to get a store-door delivery of your merchandise, or a station delivery?

A. Do you mean if this goes through?

Q. If the authority which is sought in this application is

granted, yes.

A. Well, I supposed that it was to be handled the same as the Pennsylvania Railroad. That is, for a nominal extra charge the Pennsylvania Railroad gives us store-door delivery.

Q. For an extra charge?

A. Yes, sir.

Q. Well, now, what representations, if any, have actually been made to you by The Willett Company in connection with store-door delivery?

Mr. HARRY YOCKEY. Just a moment.

A. None

Mr. HARRY YOCKEY. Just a moment, please, Mr. Witness.

The WITNESS. Pardon me.

Mr. HARRY YOCKEY, All right. Go right ahead.

A. None, that I remember of.

By Mr. DES ROCHES:

Q. None, that you remember of?

A. No.

Q. Well, do you understand the situation to be that the delivery of your merchandise will be made to the station of the Pennsylvania Railroad up there at Lagrange, and you will have to pick it up with your own equipment, or make other arrangements for handling it?

A. There was nothing of that sort that entered into the conver-

sation, that I remember anything about.

Q. Nothing was said about that?

A. No.

Q. Is that a factor that you were interested in?

A. Sir?

Q. I say, is that a factor, is the matter of the delivery of your merchandise, a factor that you are interested in?

A. To a certain extent; yes

Q. You are interested in store-door delivery, are you not?

A. Yes, to a certain extent.

Q. And you are getting that at the present time from the common motor carriers, are you not?

A. Well, yes.

Q. Pardon me?

A. Yes, sir, and also from the Pennsylvania Railroad.

Q. How are they making the delivery of your shipments to you at the present time?

A. By dray.

Q. Dray?

A. Yes, sir.

Q. What is the name of the drayman?

A. I think they have an agent there.

Q. What is his name?

A. Mr. Roy Macklin.

Q. Now, were any representations made to you by The Willett Company or by The Pennsylvania Railroad Company in connection with a saving in time, in connection with deliveries made by The Willett Company?

A. Well, now, if I remember correctly, they said that they thought they could give a better service by this new arrangement,

than they could by their local freight.

Q. But they did not tell you exactly how much saving in time there would be, did they?

A. (Shaking bead "No.2)

Q. What is the answer?

Mr. BARKELL. Answer out loud.

Exam. HARRISON. The Reporter does not get it when you shake your head.

A. No.

By Mr. DES ROCHES:

Q. Now, Mr. Witness, as I understand the situation, your transportation needs at the present time are, generally speaking, pretty well taken care of; is that correct!

A. Quite well, yes.

Mr. DES ROCHES. That is all.

Mr. BARKELL Is there any further cross-examination of the witness?

By Mr. CLARDY .:

Q. Witness, would you be satisfied with the new, proposed service if in connection with that service you did not get storedoor pickup and delivery?

A. Well, of course, we did get along without it for a long time, ut then, that is problematical really

but then, that is problematical, really.

Mr. BARKELL. Now, Mr. Clardy—

Mr. HARRY YOCKEY. I want to object to that question, your Honor, as not involved here.

Mr. BARKELL. We are going to have to limit this cross examination. Hereafter, when you cross-examine a witness, you must complete your cross-examination at one time. We consumed a very large amount of time here yesterday by repeated and repeated cross-examination by the same counsel. Now, hereafter, if we are ever going to get through with this case, you gentlemen

will have to complete your cross-examination at one time.

Mr. Claroy. I will endeavor to do that, your Honor.

Mr. BARKELL, All right.

Mr. CLARDY. But I do not think there should be any hard and fast rule about it. In other words, there are bound to be things come up, that are suggested, perhaps, from the bench, that prompt another question.

Mr. BARKELL, We still have a lot to do in this case.

Mr. CLARDY. I appreciate that.

Mr. BARKELL. And the time at our disposal just now is more or less limited. Therefore, hereafter we are going to insist on cooperation from counsel to avoid this endless repetition of cross-examination by the same counsel.

Mr. CLARDY. I will do my best, your Honor.

Mr. BARKELL. All right.

Mr. Clardy. I will ask your permission each time, before I ask any additional questions. Of course, I am at this disadvantage, your Honor, that I cross-examine immediately following Mr. Anderson, ahead of all of these other gentlemen, and if something comes up that I have overlooked, I do not want to be cut off from going into it briefly, further.

Mr. HARRY YOCKEY, I want to object. Mr. CLARDY, I want to ask a question-

Mr. HARRY YOCKEY. Just a moment, please, Mr. Clardy. I am objecting to the question, as not being involved here. May I have a ruling, please.

Mr. BARKELL Read the question, please.

(Question read.)

Exam. Harrison. He answered, did he not?

(Answer read.)

Mr. HARRY YOCKEY: He has answered the question, so there is nothing before the Board.

Mr. BARKELL. Are you through, Mr. Clardy?

Mr. CLARDY. Pardon me?

Mr. BARKELL. Are you through?

Mr. CLARDY. If he will finish his answer, I want to ask just one further question.

Mr. HARRY YOCKEY. He did finish his answer.

Mr. CLARDY. No. I do not understand that he did. He was right in the middle of it.

Exam. HARRISON. The Reporter has the answer in his book, Mr. Clardy. He just read it to you.

Mr. Clardy. I know, your Honor, but he was just in the middle of a sentence there, as I understood it.

Exam. HARRISON. Read the answer again, please.

(Answer read.)

By Mr. CLARDY:

Q. Had you completed your answer?

A. I think I have gone far enough.

Mr. CLARDY. Well, then, your Honor, may I ask the witness one further question?

Mr. BARKELL. All right.

340 By Mr. CLARDY:

Q. You say, it is problematical?

A. Yes.

Q. By that do you mean that you expect and want the pickup and delivery service to continue?

A. Why, yes; we would appreciate that.

Q. Well, it would not be a good service unless the pickup and delivery service were continued, would it?

A. No.

Mr. CLARDY. Thank you.

Mr. HARRY YOCKEY. Are the other gentlemen through?

Mr. BARKELL. Is there any further cross-examination of this witness! (No response:) Do you have any questions on redirect, Mr. Yockey?

Mr. HARRY YOCKEY, Yes.

Redirect examination by Mr. HARRY YOCKEY:

Q. Mr. Caton, in spite of the fact that you are at the present time receiving deliveries from motor carriers either from these same points or other points, or from these same points and other points as well, if Pennsylvania Railroad service, by the institution of this truck route of The Willett Company, will expedite your service, or give you at least 24 hours quicker service, you would like to have that, would you not?

Mr. King. Just a moment.

Mr. Moberly. Objection.

Mr. King. That identical question, your Honor, has been asked of this witness by counsel, and answered two or three times, now. This is merely repetition, incumbering the records.

Mr. HARRY YOCKEY. I never asked that question but once, myself, and then on cross-examination there was an attempt to tear the testimony down. Now, on redirect examination I submit, your Honor, that I have a right to ask the witness if in spite of this other service, he would still like to have the service as outlined. Mr. Moberty. I object to the question, if the Board please, for the further reason that the question as put, contemplates a 24-hour faster service, a service that is faster than any other existing service. Now, that has not been shown at all here. The only expedition that has been shown at all here is one that will be over the existing rail service.

Mr. HARRY YOCKEY. Well, if there is any question about my question of the witness including all of the service, why, I will

be glad to reframe the question.

Mr. BARKELL., All right.

Mr. HARRY YOCKEY. I only meant it to apply to the service of The Pennsylvania Railroad; that is, an expedition in the railroad service.

Mr. BARKELL. Ask your question over again, then.

By Mr. HARRY YOCKEY:

Q. Mr. Caton, if The Pennsylvania Railroad service by the use of this Willett Company operation is expedited 24 hours, you would like to have that service; would you not?

Mr. Moberly. Pardon me, your Honor, but the objection interposed by Mr. King has not as yet been ruled on.

Mr. BARKELL. How is that?

Mr. Moberly. I say, Mr. King's objection has not as yet been ruled on, to that question.

Mr. King. That is all right. I was merely objecting in the in-

terests of time.

Mr. BARKELL. Answer the question.

A. Yes.

Mr. HARRY YOCKEY. That is all.

Mr. BARKELL. Are there any further questions of the witness, gentlemen? [No response.] If not, the witness may be excused.

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Description:

Mr. BARKELL. You may call your next witness, Mr. Yockey.

Mr. HARRY YOCKEY: Mr. Button, please.

Mr. BARKELL. Have you been sworn?

Mr. BUTTON. No.

Mr. CLARDY. Your Honor, may I suggest that it will probably save half an hour's time, if we ask all of these witnesses who are present to stand up and be sworn at once. Then we can see the whites of their eyes right now.

Mr. HARRY YOCKEY. Yes; and then we can ask each of them, as they come on, whether or not they have been sworn.

Mr. CLARDY. Yes. I see no objection to that.

Mr. BARKELL. I think that might save some time, as Mr. Clardy suggests.

Mr. CLARDY. And I understand you are concerned with that.
Mr. BARKELL. Yes. It may expedite the proceeding. All of

you gentlemen, you shippers, or any others, who are going to testify in this proceeding, please stand, raise your right hands, and be sworn.

(The witnesses were sworn.)

Mr. BARKELL, Proceed.

M. L. Butron was sworn and testified as follows:

Direct examination by Mr. HARRY YOCKEY:

Q. You may state your name.

A. M. L. Button.

Q. Where do you live?

A. I live in Allegan, Michigan, but I work in Plainwell.

Q. Plainsville?

A. Plainwell.

Q. And where is Plainwell located, Mr. Button, with reference to Kalamazoo?

A. 12 miles north.

Q. What is your business?

A: Angle-Steel Stool Company:

Q. What is your capacity with that company?

A. Shipping clerk.

Q. Does your company know that you are present here as a witness in this proceeding?

A. Yes, sir.

Q. Do the representatives of your company understand that you are testifying here in connection with their shipments, and in behalf of their shipments?

A. Yes, sir.

Q. How long have you been connected with the company?

A. About eight years.

Q. And how long have you been serving the company in the capacity that you have stated?

A. Eight years.

Q. In your employment there, Mr. Button, are you acquainted with the in-bound and out-bound shipments of your company?

A. Yes.

Q. During that period what is the fact as to whether or not your company has used the services of The Pennsylvania Railroad?

A. We have always used them.

Q. In interstate commerce?

A. Yes.

Q. Now, in what business is your company engaged; that is, what does it manufacture?

A. Steel equipment of all kinds. We-manufacture work
benches, stools, chairs, cabinets, posture chairs—everything
in steel.

Q. Now, did I ask you whether or not you are acquainted with the in-bound and out-bound interstate shipments of your company?

A. Yes.

Q. You do have both in-bound and out-bound shipments, do you?

A. Yes, sir.

Q. Now, I am going to confine my questions entirely, Mr. Button, to the interstate shipments. What interstate in-bound

shipments does your company have?

A. Well, we have castors from Bridgeport, Connecticut; we have seat caps from Philadelphia; rivets from New Brighton, Pennsylvania; iron and steel from Youngstown, Ohio—now, this is all over the Pennsylvania Railroad, of course.

Q. Yes, that is correct; that is all that I am asking you about.

A. All right.

Q, Just the Pennsylvania Railroad.

A. Then, we have let me see

Q. Do you have anything from Buffalo?

A. Yes, sir; seats and steel stampings. Q. How about Louisville, Kentucky?

A. Varnish.

Q. Do you have anything from Cleveland, Ohio?

A. Rivets, bolts, nuts.

346 Q. Screws?

A. Yes.

Q. Well, now then, regarding each of these points, taking them one by one, as you have enumerated them: How frequently do the shipments from Bridgeport, Connecticut, come in?

A. Well, we most generally try to get a month's supply, so that

they will come in all at the same time.

Q. A month's supply?

A. Yes.

Q. That is about once a month?

A. Yes, sir.

Q. From Bridgeport, Connecticut?

A. Yes, sir.

Q. Now, what is the weight, or what is the approximate weight, of the shipments from Bridgeport?

A. Oh, those shipments will run all the way from 1,000 pounds to 2,000 pounds, I should judge.

Q. All right. Now, the shipments from Bridgeport, Connecticut—

A. That was Bridgeport.

Q. Or rather, I mean, the shipments from New Brighton, Pennsylvania: how frequently do they come in!

A. Oh, those shipments will come in about once a week, I would say.

Q. Once a week?

A. Well, I will say, from once a week to twice a month.

Q. And what is the average weight of those shipments?
A. From 500 pounds to 1,000 pounds.

Q. Now, the shipments from Philadelphia, Pennsylvania: how

frequently do they come in?

A. Oh, we will get those shipments in anywhere from once a month to once every two months, and we get quite a quantity of those.

Q. What is the average weight of those shipments?

A. Well, now, let me see. Those shipments will run—oh, probably from 2,500 pounds up to around 4,000 pounds, perhaps.

Q. All right. Now, taking the shipments coming in from Buffalo, New York: how frequently do they arrive?

A. About once a month.

Q. And what is the average weight of those shipments?

A. Well, they are heavy.

Q. How heavy will they run?

A. Oh, they will run up anywhere from—well, I will say, from 10.000 pounds up to around 20,000 pounds.

Q. All right. Now, the shipments from Cleveland, Ohio: how frequently do you have those shipments coming in?

A., That is hard to say.

Q. Approximately.

A. Well, I will say, approximately once a week we will be getting a shipment in from Cleveland.

Q. And what is the average weight of those shipments?

348 A. About 500 pounds.

Q. 500 pounds?

A. 500 to 1,000 pounds.

Q. All right. Now, how about the shipments from Louisville, Kentucky? How frequently do those shipments arrive?

A. We get shipments in from Louisville about—well, once every two weeks, I will say.

Q. And the average weight of those shipments?

A. Around 1,000 pounds.

Q. 1,000 pounds?

A. Yes.

Q. Now, as I understand it, Mr. Button, all of these shipments that you have testified to are shipments that arrive over the Pennsylvania Railroad; is that correct?

A. Yes, sir.

Q. All right. Now, then, regarding your out-bound shipments: of what commodity or commodities do your out-bound shipments over the Pennsylvania Railroad, consist?

A. Well, the out-bound shipments would-consist, naturally, of

everything that we make, because we ship to all 48 states.

Q. What are some of the items?

A. Well, there are cabinets, stools, and chairs, and in addition to that, all kinds of special steel equipment.

Q. All right. Now, then, where are some of these points to which you ship from your place of business at Plainwell, on

349 the Pennsylvania Railroad?

A. Well, different southern points in particular, in Virginia and West Virginia, and North Carolina, and points in through there.

Q: How many states do you ship into?

A. All of them.

Q. All of them?

A. All 48.

Q. And all of the shipments move out from that particular plant at Plainwell, Michigan, do they?

A. Yes, sir.

Q. Do they all go out over the Pennsylvania Railroad?

A. No, sir.

Q. Well, now, for the purpose of these questions, let us confine ourselves to the Pennsylvania Railroad.

A. All right.

Q. Does the Pennsylvania Railroad take shipments out of there that go into all of the 48 states?

A. Well-

Q. If you know.

A. The Pennsylvania Railroad does not get anything that goes into the state of Ohio, or the state of Indiana, usually, unless it is routed that way.

Q. I. see.

A. Or Illinois, either, because it is to our advantage not to move the shipments that way; but in the case of anything that is going to move over a long stretch of territory, why, it will go out over the Pennsylvania Railroad.

Q. Well, now then, approximately how much Pennsylvania

Railroad freight do you sendout, as you have indicated?

A. Well, we send out anywhere from-

Q. That is, l. c. l.

A. L. o. 1.?

Q. Less than carload.

A. Well, 50,000 pounds to 75,000 pounds per month.

Q. All of the shipments concerning which you testified, in connection with your incoming or inbound shipments, were less than carload shipments also, were they?

A. Yes, sir.

Q. Well, now then, has there been any explanation made to you by an employee of The Pennsylvania Railroad Company, as to what this service is, what this proposed truck service is that they want to institute?

A. Yes, sir.

Q. And was it explained to you that they would institute, if granted authority, a truck line carrying the less than carload freight from Kalamazoo to Grand Rapids, Michigan; that there would be a truck going from Kalamazoo to Grand Rapids, and a truck going from Grand Rapids to Kalamazoo; and that it would pick this freight up?

351 A. Yes.

Q. And was it also explained to you that by that service, in connection with the Pennsylvania Railroad, they would expedite your service 24 hours?

A. They explained that they hoped to.

Q. If the service was instituted?

A. Yes, sir.

Q. Well, now then, what kind of pickup and delivery service or rather, first, does the Pennsylvania Railroad render you at this time any pickup and delivery service at Plainwell?

A. Why, they would if we required them to do so, but we deliver

our own, it so happens.

Q. You deliver your own?

A. Yes, sir.

Q. And pick up your own?

A. Yes, sir.

Q. Has it been explained to you that The Willett Company does not propose to render any pickup and delivery service in your town, by reason of the fact that there is already a pickup and delivery service there by the Pennsylvania Railroad?

A. Yes.

Q. Now, then, if this particular service is instituted, and if they give you thereby an expedited service of 24 hours, through this rail-truck service of The Pennsylvania Railroad and The

Willett Company, will that serve the convenience and

352 necessity of your company?

Mr. Moberly. Just a moment.

A. Why, certainly.

By Mr. HARRY YOCKEY:

Q. And would your company like to have it-

Mr. Moberty. Just a moment, please, Mr. Yockey. To which I object, if the Board please, for the reason that so far the only qualification that we have had of this witness is that this witness is shipping clerk for his company, and that he is familiar with the service that is being rendered. There has been nothing put into this record as yet to show that he can control or in any way direct the routing, or that he will control the routing on any of his company's shipments.

Mr. BARKELL. I think that is true.

Mr. Moberty. If they produced the traffic manager, or one of the other officers here, it would be another matter.

Mr. HARRY YOCKEY. To save time, I will withdraw the question.

By Mr. HARRY YOCKEY:

Q. Mr. Button, do you have anything to do with the routing of the shipments of your company, or directing how the shipments shall be routed?

A. Yes, sir.

Q. All right. Now, then, what is the fact as to whether or not your company would like to have this expedited service, if the authority is granted, as indicated?

if the Board please. I do not believe the record shows yet as to just what this witness has to do with the shipments, or what his particular duties are. He may do nothing more than carry out orders from somebody else. I do not believe that the witness has been properly qualified as yet.

Mr. HARRY YOCKEY. Well, now, if your Honor please, I think

that this is mere piffle.

Mr. BARKELL. Oh, we think the witness can answer the ques-

tion, as far as his own knowledge goes of the subject.

Mr. CLARDY. May I observe also, in support of the objection, your Honor, that despite the authority that this man may have, he undoubtedly has superiors in his company who control the policy that is involved in that particular question.

Mr. BARKELL. Is there any question-

Mr. CLARDY. He might be in entire charge—pardon me—as far as the shipments are concerned, but that does not mean that he would determine a question of policy such as this.

Mr. HARRY YOCKEY. He says he does.

Mr. BARKELL. Well, the objection is overruled, and the witness may answer the question.

By Mr. HARRY YOCKEY:

Q. The Chairman has ruled that you may answer.

A. What is the question again?

Mr. HARRY YOCKEY. Read it, please.

.354 (Question read.)

A. Well, I would answer your question in this way: We are confronted with the fact that we have got competition; we are located in Michigan, and our competition is located in the east, and around through Illinois; and 24 hours, of course will make a day, and now days people want things when they want them; they do not want to wait, and if we can get our shipments in 24 hours quicker, why, that is going to help our business, regardless of whether I have got any authority, or not. The company is going to demand that I get them in there the quickest way I can, and the customers are going to demand that I get them out the quickest way I can.

By Mr. HARRY YOCKEY:

Q. And you would like to have that service, would you!

A. Yes, sir.

Mr. HARRY YOCKEY. That is all.

Mr. Barkell. Now, gentlemen, once again before we proceed with the cross-examination, let me ask you to proceed with the cross-examination in orderly fashion. Let us start with Mr. Anderson here, or his associate, and proceed in regular order around the table, and I think it will save time, Mr. Clardy, if you will take the witness last.

Mr. CLARDY. Well, it may or it may not save time, your Honor.

I do not know. It might save time if I were to take him first.

Mr. BARKELL. Well, we will try it that way first, anyway.
Mr. CLARDY. I will be the clean-up man, then.

Mr. BARKELL. Right. Mr. CLARDY. All right.

Cross-examination by Mr. Moberly:

Q. Mr. Button, how many common carriers by motor vehicle if you know, are at the present time serving your town of Plainwell?

A. Well, now, let me answer that question this way: There are a number of them that go through there, but I think that there are only about three or four that have P. U. C., so that they can stop there and pick up freight.

Q. Which ones are they?

A. Well, those are—I believe that they are Keeshin Motor Express; Associated Truck Lines; and Allegan-Kalamazoo Truck Lines.

Q. What was that last one again?

A. Allegan-Kalamazoo Truck Lines.

Q. Yes.!

A. And also Clemens Truck Lines.

Q. How about Wolverine?

A. Wolverine, yes, sir; but then, as far as they are concerned, they do not have any regular schedule in there as far as I know.

Q. How many of the carriers that you have just named are you using at the present time?

356 A. We only use two.

Q. What are they?

A. Associated Truck Lines, and Allegan-Kalamazoo Truck Lines. Those are the only ones that we are using.

By Mr. EGGERS:

Q. Pardon me, Mr. Witness, but I still do not get the name of that truck line.

A. Which?

Q. The last one.

A. Allegan-Kalamazoo.

Q. Allegan-Kalamazoo?

A. Allegan-Kalamazoo Truck Lines.

Mr. EGGERS. All right.

By Mr. MOBERLY:

Q. Does Michigan Interstate serve Plainwell?

A. Well, now, they may, possibly. It is possible that they do, but they never come up our way, however.

Q. So that you have used only one or two of those common carriers, have you?

A. Common carriers?

Q. Yes.

A. Well, we have some truckers bring in truckloads there, but they are under contract with the steel company, the way I understand it.

Q. Do you mean by that, that they are under contract with the Angle Steel Stool Company?

A. No.

357 Q. With whom?

A. I mean by that, that they are under contract, as I understand it, with the steel companies that furnish our steel.

Q. I see. Well, now, what means of transportation is your company using at the present time for service from Plainwell to points in Indiana, Ohio, and Illinois?

A. Well, unless our customers route it, we use truck service.

Q. Either or both of the two carriers that you named a moment ago?

A. Well, Allegan-Kalamazoo Truck Lines are merely a pick-up line for the Universal Carloading Company, as far as we are concerned, although I will say that if they do have Sturgis trucks, or that is, Sturgis freight on their trucks, why, they will take it into Sturgis. But outside of that, why, Allegan-Kalamazoo Truck Lines use that—or rather, we use that line to pick up, for the Universal Carloading Company. But Associated Truck Lines handle it for us by transfer into other states, and they take care of that themselves to the best advantage for us, and we are very well satisfied with that service.

Q: You are satisfied with the service that you are receiving at the present time, are you?

A. Over that territory; yes, sir, for short hauls.

Q. And when you refer to "that territory" you mean the Indiana. Illinois, and Ohio territory that you mentioned before, do you?

A. Yes, sir. On the short hauls, of course, I suppose we could improve the service.

Mr. MOBERLY. I believe that is all.

By Mr. DES ROCHES:

Q. Mr. Button, are you using the service of any common motor carriers on your longer hauls at the present time?

A. Not if we can help it.

Q. You have never used the service of any?

A. Oh, yes; we have, when the order has come in routed that way.

Q. What common carrier service have you had occasion to use on your longer hauls?

A. Well, Associated Truck Lines has most generally taken the shipments into Detroit for us.

Q. Associated Truck Lines has been serving your company for a great many years, has it not?

A. Yes.

Q. And the service has been pretty good, has it not?

A. Well, yes.

Q. Generally speaking.

A. In the last five or six years.

Q. Yes. They have always had equipment available for your use; have they not?

A. (Nodding head "Yes.")

Q. And that is generally true—

Exam. Harrison. Just a moment.

Mr. Eggers. Speak out, please, Mr. Witness. The Re59 porter does not get it when you shake your head.

. Mr. HARRY YOCKEY. Answer so the Reporter can put it in the record.

A. Yes.

By Mr. DES ROCHES:

Q. Your answer is "Yes"?

A: Yes.

- Q. And that is generally true of the other common motor carriers also; is it not?
 - A. Yes, sir-it is generally true.

Q. That is what I say.

A. We have no complaint:

Mr. DES ROCHES. That is all.

By Mr. CLARDY:

- Q. Witness, you are using on your in-bound movements a number of carriers that you did not name, but that are selected by the shippers, as I understand it. Is that correct?
 - A. Yes.

Q. Is Wolverine Express in that category?

- A. Why, the Wolverine Express used to bring in to us paint from Chicago, but we were not able to depend on them, so that is brought in by Associated Truck Lines now.
- Q. And Associated Truck Lines are handling that movement satisfactorily for you at the present time, are they?

A. Yes, sir.

Q. Now, in movements from these various towns that you have named—and I will just take them up with you in inverse order—from Cleveland, Ohio, are you using any motor carrier service?

A. No.

- Q. There is no motor carrier serving you at the present time in either direction, so far as Cleveland is concerned, is there?
- A. Well, once in a while we will send something up by motor truck, if the customer demands it.

Q. Do you have any in-bound movement from Cleveland?

- A. Well, just once in a while, if they happen to ship it that way, we do; yes, sir. However, we prefer it by freight, if we can get it that way.
 - Q. Is Cleveland a point of your steel supply?

A. Rivets.

Q. For rivets?

- A. Yes, sir; for steel rivets.
- Q. And they come in-
- A. In kegs.
- Q. In fairly large quantities, do they?

A. They come in, in kegs. They do not come in in truckload lots or carload lots, but they come in in pretty good-sized quantities.

Q. Is there any advantage, any rate advantage, in using one type

of carrier, as against another?

A. No.

Q. It is about the same on that score, is it?

A. The same rate; yes, sir.

361 Q. But with respect to the time of the rail service from

Cleveland, what is the present time?

A. Well, we can get it in by freight in two days, but by truck we have never had it in, in less than four days, because it is held up in Cleveland—or rather, I mean, in Toledo.

Q. What line are you referring to?

A. Well, that I wouldn't be able to say, because when we make a complaint, or send a tracer through on something, they will say, "Well, it was held up there." They have half a dozen different lines picking up at the terminal in Toledo.

Q. Do you have any knowledge as to whether there is any motor carrier that operates directly between Cleveland and your

town?

A. No: there is not.

Q. Are you sure?

A. Not that I know of.

Q. Are you sure, Witness?

A. Well, now, I would not say positively about that, either, no, sir; because I never know when there is going to be a new truck line coming up-through there.

Q. All right. Now, if the application here is granted how do you understand that the shipments from Cleveland will move!

A. Well, that would be a hard question for me to answer right at this moment, because after all, I don't have anything to do with it, I don't handle the railroad routing, but I should judge that

it would probably come into Kalamazoo, and be trucked up-

362 from Kalamazoo to us.

Q. Well, the question that was asked of you by counsel for the applicant here, mentioned only an operation from your town into Grand Rapids:

A. (No answer.)

Q. Did you catch that, when he asked the question?

A. I didn't understand it that way.

Mr. HARRY YOCKEY. I beg your pardon, Mr. Clardy. It was between Grand Rapids and Kalamazoo.

Mr. Clarby. Your question implied; as I understood it, that his movement would be taken into Grand Rapids.

Mr. HARRY YOCKEY. My question was, from Kalamazoo to Grand Rapids, and from Grand Rapids to Kalamazoo.

By Mr. HARRY YOCKEY:

Q. Was that not the way you understood my question, Mr. Button!

A. Yes, sir.

Mr. CLARDY. All right.

By Mr. CLARDY:

Q. On the basis of that understanding, then, do you know which, way the movements from Cleveland will come into your town?

A. (No answer.)

Q. In other words, will they come from Kalamazoo -

A. I don't know.

Q. Or will they come from Grand Rapids?

A. That I wouldn't be able to tell you. I don't know.

Q. Well, have you checked their schedules, to see any

thing about the actual time that would be consumed if the railroad brought it in by truck?

A. No, sir, that is something that I haven't done, because I

haven't seen any schedule of it.

Q. All right. Will you take applicant's exhibit No. 4 in this proceeding—do you have that before you?

. A. Yes.

Q. All right. Now, looking at applicant's exhibit No. 4, so that you will have the situation in mind, I want to develop something. Assuming a shipment comes out of Cleveland, destined to your town of Plainwell, Michigan, by rail: do you have any knowledge as to whether it will go on a truck out of Fort Wayne, or not?

A. No.

Q. Pardon me?

A. I haven't; no, sir.

- Q. Well, assuming, since the question implied otherwise, that it does not go on a truck until it gets to Kalamazoo, to take the nearest point: do you have the slightest knowledge as to how much time will be consumed in getting that shipment by rail to Kalamazoo?
- A. No, sir; I haven't. I haven't any more idea of that right now, than you have, I suppose.

Q. Well, your knowledge is rather faulty, then.

364 A. Probably so.

Mr. HARRY YOCKEY. Very!

By Mr. CLARDY:

Q. You and I. Witness, are at a mutual disadvantage, because we have had to listen only to their witnesses so far.

A. Possibly so.

Q. Now, Witness, you heard their testimony, you heard the testimony of the applicant here, with respect to the fact that less than truckload shipments coming into Fort Wayne by rail, if they move out of there by truck, would go onto the truck and move out of there at once, did you not?

A. (No answer.)

Q. You heard that, did you not?

A. Well, the way I understand it, my understanding of it is this, that The Pennsylvania Railroad will pull the freight on the railroad as far as it can, and then when it gets to a place where it is slowed up, like between Kalamazoo and Grand Rapids, where our local train runs one day north and the next day south, the truck will speed up that service, because we will get one truck north and one truck south every day, rather than every other day.

Q. Well, now, we have not got the shipment to Kalamazoo yet,

and I want you to help me get it there.

A. All right.

Q. If the movement is a less-than-truckload movement from Cleveland, do you understand that it will be moved in a car from Cleveland, destined to be opened only after it gets to Kalamazoo, or do you understand that it will come to Fort Wayne and be transferred there across the rail dock to another train, and then move up to Kalamazoo?

A. Well, that is a little bit hard to tell just at this time, how

that will be, or how they will handle it.

Q. Well, if it should develop—— A. What we are worried about is how to get it in there.

Q. Well, we are, too. Now, if it should develop in this proceeding, that the movement will not be a through movement from Cleveland—and when I refer to a through movement, I am speaking of the kind that was mentioned here, that Mr. Christie mentioned, when he was talking about a movement of a solid car from New York to Grand Rapids—if it is not of that character, I say, but must be transferred from the car that brings it into Fort Wayne to the dock of the railroad company, and then be put into another car destined to move north to Kalamazoo, do you have any idea that the service up as far as Kalamazoo will be expedited one whit!

A. Well, as far as the transfer is concerned, it is probably no different from what any other company does, because at the present time, with our truck lines, they will pick it up there at Plain-

well and take it into Kalamazoo and transfer it again.

Q. I am not speaking of that, Witness. I am speaking of your understanding of the service that is proposed here.

Do you anticipate that if it is handled that way, Witness, there will be any expedition of the movement, insofar as the operation up to Kalamazoo, as far as Kalamazoo is concerned?

A. As far as Kalamazoo is concerned?

Q. Yes, sir.

A. Well, no, sir; probably there will not be.

Q. All right.

A. It will be about the same.

Q. All right.

A. But from Kalamazoo to Plainwell, it will be different.

Q. Now, let us see. Do you know anything about the time? that the train would get into Kalamazoo, bringing the merchandise that is to be transferred to the truck—

A. No.

Q. That is to bring it on to your town?

A. No. sir.

Q. Well, will you look again, please, Witness, at applicant's exhibit No. 4, which you have before you there.

A. Yes.

Q. You will notice there that the departure time out of Kalamazoo as far as Grand Rapids is 4 p. m.

· A. Just a moment.

Q. Show in the third typewritten line.

Exam. Harrison. The second schedule.

367 A. Yes.

By Mr. CLARDY:

Q. Do you see that?

A. Um, hm.

Q. What is the answer?

A. Yes, sir.

Q. All right. Do you have the slightest knowledge as to whether or not, in every instance, the train that brings the merchandise into Kalamazoo, that is destined to your town, will get there in time to make that same time, that same 4 o'clock schedule?

A. No.

.Q. Or have you been told anything about that?

A. I haven't any more knowledge

Q. Than I have?

Mr. HARRY YOCKEY. Than his faulty knowledge?

Mr. Eggers. Off the record.

(Discussion outside the record.)

Mr. BARKELL. Back on the record. Proceed.

By Mr. CLARDY:

Q. The reason why I am asking you that, Witness, is because it has been stated here that the record is very clear. However, it is not clear to you yet, as to when that freight will be transferred to the truck, is it?

A. Well, as far as our interest in the proposition is concerned, the principal thing that we need is a 24-hour speeding up of the service.

368 Q. I appreciate that.

A. In other words, we do not care whether they actually get it in there late, so that it could not catch the train, or make that connection, or not; but if they will speed up the service, as far as the movement of any particular shipment is concerned, that is what we request.

Q. All right. Now, Witness, if you will just bear with me a moment, here, we will see whether or not we are going to get that for you.

A. All right. Of course, I might say, we don't know just exactly how it is going to work out, because they haven't tried it yet.

Q. You do not have any definite idea about it yet, do you?

A. Well, all that I have got is their word for it, that they are going to speed up the service.

Q. Yes..

A. And that is all that we are interested in.

Q. All right. Now, will you just bear with me for a few further questions, and we will get through just as quickly as possible?

A. All right, sir.

Q. Assuming for the sake of this new question, now, that the shipment comes in on a train that gets there too late to make that 4 o'clock departure time out of Kalamazoo. You will agree with me, then, will you not, that the shipment would have to wait

over until 4 o'clock p. m. the next day?

369 A. Yes.

Q. At the present time if a shipment gets into Kalamazoo in the afternoon by train, does it go out on the way freight the next day, or every other day?

A. It is according to which end of the line the local happens

to be at, -

Q. Well, does it go every day, or every other day?

A. Every other day.

Q. Every other day!

A. From Kalamazoo.

Q. If it happens to get in there on the day before the train is due to go north, then it goes out on the way freight the next day, does it not?

A. Yes, sir; but it would have to get in there before 4 o'clock in the afternoon, because, you see, the local leaves Kalamazoo about 10 o'clock in the morning.

Q. About what time?

A. 10 o'clock in the morning.

- Q. Well, assuming that the freight gets in there on the day before the scheduled departure of the way freight on the next day: then the truck service conceivably would be slower than the present train service, under those circumstances, would it not?
- A. Well, under those circumstances, if the local did not have to set out and switch cars out on the line, switching all the way down the line, but could drop off our freight before it went down to the paper mill to switch, it would be; yes, sir.

Q. All right.

A. But otherwise, it is about three or four o'clock in the afternoon, before it gets in there.

Q. Out of Kalamazoo?

A. Yes.

- Q. So it takes, then, pretty nearly all day to go from Kalamazoo to Plainwell?
- A. According to how much work they have to do on the way down, that is correct; yes, sir.
- Q. Well, now, what time do you close your receiving room each day?

A. Five o'clock.

Q. At five o'clock?

A. Yes, sir.

Q. So that if the truck out of Kalamazoo had anything to do before it got to your point, even if it made the four o'clock schedule, it might have to pass you up on that day, might it not?

A. No.

Q. Why not?

A. Because the truck would drop the freight off at the railroad station, and then we would pick it up at the railroad station the next morning.

Q. That is because you receive some sort of an allowance on the pick-up and delivery you make yourselves, is it?

A. Yes, sir.

- Q. Well, then, on the day that the northbound local train does not run-
 - A. Are you talking about freight or truck, now?

Q. Freight.

A. All right.

Q. If, under the circumstances that you have just described, the freight gets in there after four o'clock in the afternoon, or too late to make the four o'clock proposed truck departure time, you

would get exactly the same delivery time by the truck as you get at the present time by train, would you not?

A. Well, if it wouldn't be any worse than it is now, it would

be all right, I would say.

Q. All right. Let me ask you this question, then: wherein, if the freight must move all the way to Kalamazoo by train, is there any possibility, that has been explained to you, of any expedition in your inbound movement from Cleveland?

A. Getting it out of Kalamazoo.

Q. Well, now, Witness, we just went over how we are going to get it out of Kalamazoo, did we not?

A. Yes.

Q. Would you point out to me-

A. You and I went over it, as to when the delivery was made.

372 Q. Yes.

A. That is right.

Mr. BARKELL. Just a moment, Mr. Clardy. Are you trying to have this witness, explain this schedule?

Mr. CLARDY. How is that, your Honor?

Mr. BARKELL. I say, are you trying to have the witness explain this schedule?

Mr. CLARDY. No.

Mr. BARKELL. It may be that he does not understand the working of this schedule himself.

Mr. CLARDY. No, your Honor, but—— Exam. HARRISON. Why not wait until Mr. Christie gets back on the stand, Mr. Clardy, and then examine him about the He, is the man who made it up, and I take it he can schedule?

explain it to you.

Mr. CLARDY. Well, if you will just bear with me a moment or two further, your Honor-this witness has been asked to make a broad statement or two here, and I just want to find out the fourdation for them, if I may. I am pretty nearly done with this particular angle. I have taken Cleveland as an example, but I want now, if I may, to see if that applies to all of the other points as well.

Mr. BARKELL, All right.

By Mr. CLARDY:

Q. In connection with movements from—I will take one more example, the easternmost point, I think that you mentioned-Bridgeport, Connecticut.

A Yes.

- Q. You do not have any more knowledge about how they would go, or how they would compare with the Cleveland movements in the present operation, do you?
- · A. No.
- Q. Do you know how many railroads such a movement—or such a shipment would be switched between, before it gets into your town?

A. Well-

Mr. HARRY YOCKEY. I want to object-

A. I would say-

Mr. HARRY YOCKEY. Just a moment, please, Mr. Button.

The WITNESS. Pardon me.

Mr. HARRY YOCKEY. I submit, now, if the Board please, that counsel is going very far afield here.

Mr. CLARDY. Oh, no.

Mr. HARRY YOCKEY. That is not involved here.

Mr. BARKELL. Let' me ask you, Mr. Clardy, what are you at-

tempting to show by this line of cross-examination?

Mr. CLARDY. I am not trying to show anything, your Honor. I am merely trying to demonstrate the contention that shipments from Bridgeport and these other points will not be expedited, and I want to find out if this witness knows anything about it.

Mr. HABRY YOCKEY. We are not attempting to expedite.

anything on other railroads, by yond Fort Wayne.

Mr. BARKELL. This withess has testified, as I understand it, that all he knows is what the representative of the railroad company has indicated to him.

Mr. HARRY YOCKEY. Yes.

Mr. BARKELL. And of his own personal knowledge, he does not know whether or not the service is going to be any better.

Mr. Clardy. Your Honors, I have tried many cases, and in a great many of them it appeared to me that the facts were so plainly evident to the Joint Board and the Examiner, that further examination would serve no purpose, because it was not necessary, only to discover later that perhaps one single statement by a single witness, had been used by the division or the Commission itself, as a basis upon which to reverse the finding. Now, merely out of an excess of caution on the basis of a considerable amount of experience, I want to get very clearly into this record a few facts with respect to what this witness knows about how the service is presently being rendered, in order to be able to convince even the Commission itself that the saving that is claimed is not there. Applying that directly to this question, here is what I have in mind—and if he had not asked about it, I would not be cross examining upon it—he has asked if the witness got ship-

ments from Bridgeport, Connecticut, and a number of other points, and then he has coupled that up with the statement, or with 375 the question to the witness, "Now, if you got a 24-hour saving in time on movements to or from those points, would that not be a fine thing for your company!" And over our objection, the witness has been permitted to answer that it would be Now, I want to find out, your Honors, if this witness, with respect to each of these towns, has any definite knowledge as to how the shipments are handled to his point, because I want to show, especially with regard to Bridgeport, that a number of carriers will be involved in the present operation, and I am sure that this witness knows it, even if he does not inspect the freight bills to discover the identity of the carriers.

Mr. BARKELL. All right.

Mr. Clardy. In order to show that there will be no possibility of any such saving of time.

Mr. HARRY YOCKEY. If the Board please, may I have just a moment further to say something in answer to that?

Mr. BARKELL Very well.

Mr. HARRY YOCKEY. I submit that this is not proper cross-examination, in the first place, because we did not attempt to go into that matter on direct examination. My entire questioning was predicated upon the hypothetical situation that, if his service could be expedited 24 hours, as explained by the representative of the railroad company, would that serve the convenience and necessity of his business, and if he would continue

any knowledge on his part. He has no knowledge of it, upon the very face of it. Now, then, I submit that to permit counsel to go into that matter further is just simply a waste of time, and beyond the issues here, and particularly beyond the scope of proper cross-examination.

Mr. CLARDY. May I say-

Mr. HARRY YOCKEY. Just a moment. This witness does not know how they transport this freight; the matter is not involved here; and I did not go into that with him on direct examination.

Mr. Clardy. If we may have it understood, your Honors, that they are not making any claim that by this witness they are making any showing that there will be any saving of time from any, of the points that they have named, then I am content not to ask the witness any further questions along this line. Otherwise, unless I am permitted to cross-examine on it, I am being unfairly cut off. Now, I say, if they are still claiming that there is going to be any saving of time there, I should be permitted to go ahead.

Mr. HARRY YOCKEY. Let me say this-

Exam. HARRISON. Just a moment.

Mr. HARRY YOCKEY. I think we can save some time here, your Honor.

Exam Harrison. All right. Go ahead.

Mr. HARRY YOCKEY. I think it follows, as a legal consequence, from the questions that I have asked, that this witness is only testifying, and all of our other shipper witnesses

here are only testifying in the abstract, unless, with a particular witness, we go beyond that—and we have not in this case; the testimony of this witness is simply based on the representations that have been made to him with respect to speeding up his service 24 hours. Now, if we do not prove that by other witnesses, that we are as a matter of fact going to make that saving of 24 hours to his town, why, then, it is just naturally axiomatic that the testimony will amount to nothing.

Mr. Mongray. I believe, if the Board please, in support of the position of Mr. Clardy, that we should have that statement from counsel for the applicant, that they are not attempting such proof

by their shipper witnesses-

Mr. HARRY YOCKEY. I have just made the statement on the record.

Mr. Moberly. Or else that we should be permitted to go into the matter and develop on the record that the shipper witnesses know nothing about the situation.

Mr. BARKELL I quite agree with you there. But have you not just stated for the record, Mr. Yockey, that you are not attempting to show by this witness, and your other shipper witnesses, that

as a matter of fact there is that saving?

Mr. HARRY YOCKEY. Yes, your Honor. That is, in other words, we are not attempting with these witnesses to go into the operation of the railroad at all of these points, because

these men know nothing about the operation of the railroad, or practically nothing. Of course, if I go into that
question with any of them, why, then, of course, they will have
the right to cross-examine; but I have only asked this witness if,
as represented, there will be an expedition in the service of 24
hours, that will serve the convenience and necessity of his company; and if we do not prove by our own witnesses, I mean by our
own company witnesses, as to what that expedition is, why, then,
of course, it follows that the testimony of this man, and other
similar testimony, will amount to nothing.

Mr. CLARDY. Well, now-

Mr. HARRY YOCKEY. I do not know how much plainer that can possibly be made.

Mr. Clarry. It is not plain enough to me yet, your Honors. I just do not understand what counsel means. If he is saying that by the testimony of this shipper witness, and any other similar shipper witnesses who may be put on the stand, he is not attempting to prove that there will be any saving of time from any of the points named in the testimony, in serving this particular shipper or his town, or other shippers and their towns, then I am content to ask no further questions along that particular line of cross-examination. But if counsel is going to claim that through the mouth of this witness, he has established that there will be

a saving in time to this shipper, this shipper's company, or 379 his town, then I insist that I must be allowed the right to go ahead. I think you understand, as I do, that he is agreeing with me, but I just want to be very sure that the record is clear on the matter.

Mr. Barkell. Well, Mr. Yockey has already made the statement, Mr. Clardy, that he is not going to claim that the testimony of this particular shipper witness, or the testimony of similar shipper witnesses, proves that there is any saving of time, as far as this shipper witness, or other similar shipper witnesses are concerned.

Mr. HARRY YOCKEY. Yes.

Mr. CLARDY. Does the Joint Board understand that?

Mr. BARKELL I understand that to be the statement of Mr.

Yockey; yes.

Mr. Harry Yockey. Of course, there may be some few exceptions, but the witness now on the stand is of the type of most of them; so unless they develop it—of course, if they develop it, why, of course, that is something else again. But as far as the testimony of this witness is concerned, and the testimony of other similar witnesses, based upon representations, it is not any proof of the fact. As far as my questions are concerned, they ought to speak for themselves, and I should not have to be making this explanation. When I ask questions of that sort, they ought to speak for themselves. If I ask any witness a question that is based upon representations which have been made to him, that is no proof of the fact.

380 Mr. Clardy. If your Honors please, if the Joint Board and the Examiner will inform me now that they understand that statement as I do, as I described my understanding a moment ago, then I am content. Otherwise, however, I am not.

Mr. HARRY YOCKEY. May I say for the record-

Mr. BARKELL. Just a moment.

Mr. HARRY YOCKEY. If it will help to make my position as to . that a little plainer—

Mr. BARKELL. Just a moment, Mr. Yockey.

Mr. HARRY YOCKEY. All right.

Mr. BARKELL. Off the record.

(Discussion outside the record.)

Mr. Barkell. Now, back on the record, please, Mr. Reporter, We feel, Mr. Clardy, in view of the statement which has been made on the record by Mr. Yockey just now, that there is no need of your examining the witness further with respect to the question

of saving of time.

Mr. CLARDY. Well, if you will pardon me for putting it bluntly this way. I do not want later to be confronted with the proposition that I stated the proposition one way, and Mr. Yockey stated it another, and the Joint Board understood it perhaps still another. Am I to understand your statement to indicate that you are in accord with me, in my understanding of Mr. Yockey's statement ?

Mr. BARKELL Well, I do not know, Mr. Clardy, whether 681 we are in accord with you exactly or not, but we do feel that in view of the statement which has been made on the record by Mr. Yockey, with respect to what he is trying to prove by this witness, and other similar witnesses, it will not be necessary for you to proceed further with any more cross examination, as far as any alleged saving in time is concerned, which the witness has indicated he-knows nothing about.

Mr. Clardy. Well, of course, your Honor, may I call your attention to the fact that up to this point, in the statement made by Mr. Yockey, he has not given an unqualified "Yes", that I have understood-his statement correctly; and I submit that until he does that, I must regard what he has said as containing a qualification of the thing, and therefore, I think I am entitled to continue with my cross examination of the witness along this line.

Mr. HARRY YOCKEY. Well, of course, if I have satisfied the Joint Board and the Examiner with the statement I have made—and

apparently I have—I do not know just what else is necessary. Mr. BARKELL. So that we will be very sure, Mr. Yockey, and so the record will be entirely clear, will you just restate your position again, very briefly and concisely, please.

Mr. HARRY YOCKEY. Yes, sir: In the case of this witness, the only question that I have asked him has been, and in the case of similar witnesses, the only question that I will ask of them

will be as to whether or not representations have been made to them regarding certain service to their cities or towns. and specifically, if the representation has been made to them that there will be an expedition in the service to their cities or towns,

over the Pennsylvania Railroad, of hours or more; and further,

if there will be that expedition, if they want that service, and will use it: and that is the only question regarding that, that I have asked, or will ask the witnesses. Now, I have stated several times before that under those circumstances we are not trying to prove that that is the fact, as to what the service actually is, or will be.

Mr. Eggers. Well, now, Mr. Clardy, I think that is perfectly

clear, as far as I am concerned.

Mr. HARRY YOCKEY (continuing). Or as to what the actual expedition of the service is or will be. It is not our intention to go beyond that That is as far as we care to go. It is not an attempt by this witness, or the other witnesses, to prove what the actual expedition is.

Mr. Eggers. I think that is perfectly clear.

Mr. HARRY YOCKEY. As to any questions here that may go beyond that, why, then, of course, that will not apply.

Mr. CLARDY. All right.

Mr. HARRY YOCKEY. On the other hand, if they themselves develop something on cross-examination to help us, like they have in their cross-examination of some of the witnesses, why,

383 / that, of course, will be their own lookout.

Mr. CLARDY. Well, now, your Honors, I think Mr. Yockey has stated a further thing in there now, which is not included in what I said, so there is another qualification.

Mr. Eggers. That is not my understanding, Mr. Clardy.

think he said that the very first time.

Mr. CLARDY. Well, I do not agree with you, your Honor.

Mr. HARRY YOCKEY: I thought I did.

Mr. BARKELL. I think the record is clear.

Mr. CLARDY. He probably intended to, but did not.

: Mr. BARKELL Let us proceed.

Mr. CLARDY. Now, Witness, there is just one further question on the subject about which I was interrogating you.

By Mr. CLARDY:

Q. You do not have any knowledge, other than that which has been given to you by Mr. Christie, representing the railroad company, with regard to the service which is proposed, or as to what will happen if they get the authority asked for in this application, do you?

A. Well, Mr. Christie did not say that.

Q. Who did?

A. Mr. Pavne.

Q. Well, then, what is your answer to my question?

A. No, sir, we have nothing additional, because, after all, we have to take the man's word for it, and if they can furnish it, why, we would certainly like to have the service speeded up 24 or more—

Mr. BARKELL. It is not necessary to explain your answer,

Mr. Witness.

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The WITNESS. . K.

Mr. BARKELL. It will save time and conserve the record if you will just answer the question directly, and then stop.

The WITNESS. All right, sir.

By Mr. CLARDY:

Q. Who is Mr. Payne?

A. Mr. Payne is the gentleman who is standing back over there right now. He is division supervisor, I believe, for The Pennsylvania Railroad.

Mr. HARRY YOCKEY. Supervising agent for The Pennsylvania Railroad, out of Grand Rapids, on the Grand Rapids division.

The WITNESS. Yes.

By Mr. CLARDY:

Q. But no representative of the trucking company approached you with regard to this application, did he?

A. (Shaking head "No.")

Exam. HARRISON. Speak up, Mr. Witness.

Mr. BARKELL Speak out, so that the Reporter can hear you. A. No.

By Mr. CLARDY:

Q. Now, Witness, you said a little earlier in your testimony here that in the movement of shipments into Indiana and Ohio, you used truck service practically exclusively.

A. Yes.

Q. Did I correctly understand you?

385 A. Yes, sir.

Q. And I understood you further to say that that was because you found it to your advantage to do so; is that correct?

A. Yes.

Q. Is that because the service into those states by motor carrier is the most expeditious manner in which you can ship?

A. Yes, sir.

Q. And you have been doing that now for quite a period of

time, have you?

A. Yes, sir; I will say we have. We have been doing it for probably around 20 years. Of course, I don't mean that I have, because I haven't always been with the company.

Q. But your company has. .

A. Yes.

Q. And you do not propose to change that service, as I understand it, do you?

A. No, sin; we do not—that is, not unless we do not get the same service that we are getting now. However, as long as we get the same service that we are getting, it will not be changed.

Q. So long as the motor carriers continue to render you that efficient and satisfactory service which you are getting at the present time, you will continue to use it?

A. Yes, sir.

Q. In the case of a movement from Fort Wayne over to your town-or, first, do you have any such movements?

386 A. Very few.

- Q. Do you have those handled by motor carrier?
- A. No, sir; we do not. Those come in right straight Pennsylvania.
 - Q. Have you ever had any shipments to Fort Wayne?

A. Yes.

Q. From your town, that is?

A. Yes, sir.

Q. Are those also handled by the Pennsylvania?

A. Well, shipments that are going to the General Electric Company, and similar accounts there are, yes, sir; but we have one account that is handled by truck, through their own routing.

Q. At their own suggestion?

A. Yes, sir; their own routing.

Q. And that has been going on for some time, has it?

A. Yes, sir; that has been going on for quite a period of time; about the last eight years, I would say.

Q. What carrier is that, by the way?

A. Well, we send the shipments out of Plainwell by Associated Truck Lines, but just whom Associated turns them over to in Kalamazoo, or wherever they take them down to, I don't know. I imagine, however, that they take them to Goshen, Indiana, and then turn them over to somebody else at that point, because they would take the longest haul, of course.

387 · Q. Have you finished?

A. Yes.

Q. Now, are those movements to and from Fort Wayne all less than truckload movements?

A. Yes.

Q: Has the rail service when you use it to and from Fort. Wayne,

been satisfactory to you?

A. Well, as far as we know it has, yes, sir; but, of course, I cannot speak for our customers. In other words, they might make complaint to the railroad company, and we would not know anything about it.

Q. I mean, so far as you are concerned.

A. Yes.

Q. I do not expect you to try to speak for anybody else,

A. Only so far as we are concerned, yes, sir—that is, outside of the fact that once in a while, if we get it on the off-day, when the freight happens to be going north, then it will be held up for 24 hours.

Q. But generally speaking, you are satisfied?

A. Generally speaking, I would say that we are satisfied with

the service; yes, sir.

Q. Now, with regard to the motor carrier service, has the consignee who has specified motor carrier service at Fort Wayne, complained to you about the character of the service?

A. Why, no, sir. I don't imagine that he would complain, ither. Probably, if he didn't like the service, why, he

would change over to the freight.

Q. Do you have any idea as to the time consumed in making

delivery by train, and also by motor carrier?

A. Well, the train, I imagine, is probably about four hours that is, if they make the run right straight through, it will be about four hours; probably three or four hours into Kalamazoo, and then the following morning, on the local, if we happen to hit it that way; otherwise, probably two days will cover it, from Fort Wayne. By truck, it is according to what truck line handles it. We have Associated Truck Lines pick the shipment up in Plainwell, if we are going to Fort Wayne, if it is to be shipped by truck, and Associated will take it by its longest haul, of course, but they turn it over to another truck line; so that there is a transfer at Kalamazoo, and there is also a transfer down at the end of the haul, because, even considering it most favorably, there will be three or four hours involved in the transfer anyway, because, naturally, the truck lines do not all make the same place at the same time. That is, they do not all maintain the same schedules; so it would probably take three to four days to get it down there.

Q. Do you know that?

A. No, sir; I don't.

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Q. You are just speculating then, as to that?

A. I am just speculating, you might say, yes, sir; but based on past experience, knowing pretty well what they do.

Q. Well, have you ever had occasion, Witness, to investigate into the matter, and see definitely how much time was used by either the railroad or the truck companies in making deliveries to Fort Wayne?

A. No, I have not.

Q. All right.

A. Life is too short.

Q. Now, I do not believe that you mentioned Chicago—or rather, I do not recall hearing you mention it—as one of these points.

A. Yes, I think so.

Q. Do you ship to and from Chicago?

A. Yes.

Q. Do you use the Pennsylvania Railroad in that movement, or do you use truck service?

A. Truck.

Q. That is because movements to and from that point would involve too long and roundabout a route by way of the rail; is that correct?

A. Yes, sir; that is correct. We can get an overnight service to and from there by truck.

Q. How?

A. I say, we can get an overnight service, as far as Chicago is concerned, by truck.

Q. By truck.

390 A. Yes.

Q. And so you use the truck service.

A. Yes.

Q Are you satisfied with it?

A. (Nodding head "Yes.")

Mr. EGGERS. Speak out, Mr. Witness. Mr. Yockey. So the Reporter can get it.

A. Yes.

By Mr. CLARDY:

Q. Now, Witness, are there any points on the routes which are set forth in applicant's exhibit No. 2 here, if you have that exhibit in mind—

A. Yes: I have it right here.

Q. Other than Fort Wayne, to or from which you have occasion to ship anything?

A. Are there any points on these same routes?

Q. In the state of Indiana.

A. Intrastate?

Q. No. I should have said interstate.

A. Oh.

Q. Are there any points other than Fort Wayne, to which you ship there, in interstate commerce?

A. That is, on this route?

Q. Yes.

A. Oh, once in a while we go to Kendallville.

Q. Where?

391 A Kendallville, but very seldom.

Q. And is that always by rail?

A. Yes.

Q. No representations have been made to you, have there, with respect to whether or not there would be any saving in time in connection with the movement of shipments to Kendallville?

A. No.

Q. All right.

A. That is, outside of the fact that they said that they would speed up our shipments leaving Plainwell by 24 hours, and that is all we are asking for.

Q. That did not apply, though, to any particular town, did

it?

A. No, sir; that didn't apply to any particular place, in my opinion, or as I understand it—just the fact that they were going to move our freight 24 hours quicker.

Q. I believe your original statement was, they told you that

they hoped to. Is that correct?

A. Yes, sir; that they hoped to.

Q. Sure.

A. They couldn't make a positive statement.

Mr. CLARDY. I believe that is all—oh, pardon me. There is just one further question.

By Mr. CLARDY:

Q. What is the name of the Chicago carrier?

A. Well, Associated Truck Lines take it out, but I believe that they take it to—

Exam. HARRISON. You do not need to go any further than that, Mr. Witness.

The WITNESS. All right.

Exam. HARRISON. Mr. Clardy asked you what the name of the carrier was, and you have answered the question.

The WITNESS. O. K.

Mr. BARKELL. Just answer the question and stop there.

By Exam. HARRISON:

Q. You do not know what carrier takes the shipment into Chicago, do you?

A. Well, no. sir; I don't know that. All I know is that Associated leaves Plainwell with it.

By Mr. CLARDY:

Q. And it gets there the next morning, does it!

A. Why, pretty generally it does, I would say, yes, sir; unless they blow a tire, or something such as that.

Mr. CLARDY. That is all.

Mr. Barkell. Have you any further questions of the witness, Mr. Yockey?

Mr. HARRY YOCKEY. That is all.

Mr. BARKELL: You are excused.

(Witness excused.)

Mr. BARKELL. We will take a short recess before you call your next witness.

(A short recess was taken.)

Mr. BARKELL. Come to order, please, gentlemen. may call your next witness, please, Mr. Yockey.

Mr. HARRY YOCKEY, Mr. Dinkel.

Mr. BARKELL, Have you been sworn?

Mr. DINKEL, Yes, sir.

EDWARD F. DINKEL was sworn and testified as follows:

Direct examination by Mr. HARRY YOCKEY:

Q. You may state your full name.

A. Edward F. Dinkel.

Where do you reside! Conklin, Michigan.

By Mr. ANDERSON:

Q. Conklin!

A. Yes, sir.

By Mr. HARRY YOCKEY:

Q. What is your business?

A. Farm equipment and hardware.

Q. What is the name of your company?

A. The same as I stated.

Q. Dinkel?

A: E. F. Dinkel.

Q. That is your own individual business?

Q. State the nature of the business again.

A. Farm equipment mostly, and some hardware.

Q. Do you use the Pennsylvania Railroad, in the movement of your in-bound or out-bound shipments?

394 A. Yes.

Q. Do you have any out-bound shipments—and I should say that all of the questions that I ask you here will have to do with interstate shipments.

A. I understand.

Q. Do you have any out-bound shipments?

A. Some, yes.

Q. And you have in-bound shipments, do you?

A. Yes.

Q. Now, then, on your out-bound shipments—or rather, let us take first the in-bound shipments. What do they consist of?

A. Oh, farm equipment out of Moline, Illinois. That is one of our major movements—or items.

Q. All right. What other points?

A. Milwaukee, Wisconsin.

Q. What comes from there?

A. Hardware.

Q. What else?

A. Waterloo.

Q. Waterloo, Iowa?

A. Yes, sir.

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Q. What commodity? .

A. Tractors, tractor equipment and parts.

Q. What other point?

A. Kendallville.

By Mr. CEARDY:

Q. That last again?

A. Kendallville.

By Mr. HARRY YOCKEY:

Q. Kendallville, Indiana?

A. Yes, sir.

Q. What commodity or commodities do you receive out of Kendallville?

A. Pipe, pumps, tanks, and so forth.

Q. Do you get anything out of Indianapolis?

A. No.

Q. How?

A. What was that question again?

Q. Do you get anything in-bound out of Indianapolis!

A. Yes, some.

Q. What do you get out of there?

A. Agricultural machinery.

Q. Now, are all of those that I have asked you about, or that, you have answered about, in-bound shipments?

A. Yes.

Q. Now, then, let us take Milwaukee, Wisconsin. How frequently do you receive shipments from that point?

A. About twice a month.

Q. What is the average weight of those shipments?

A. I would say, from 300 to 500 pounds.

Q All right. Now, with respect to your shipments from Moline, Illinois; how frequently do you receive those shipments?

396 A. Well, during the rush season, possibly twice a week.

. Q. What do you mean by "the rush season"?

A. That is during the summer months.

Q. Now, then, what will be-or what is the average weight of those shipments?

A. Oh, those particular shipments will run from 500 pounds

up to around 2,000 pounds, I would say.

Q. Do you have occasion to receive shipments from Moline, other than during the rush season?

A. Yes.

Q. How frequently will that be?

A. I would say, once a month.

Q. All right. Now, take next your shipments from Waterloo, Iowa. How frequent are those received?

A. Well, they are not so frequent, either. We would have

repairs possibly once a month.

Q. What is the average weight of those shipments?

A. From 300 to 500 pounds.

Q. Now, taking your shipments from Indianapolis, Indiana; how frequently do you receive those shipments?

A. I would say once a month.

Q. And the average weight?

A. They would run from 100 pounds to 300 pounds.

Q. Now, you named one other point, F-believe, from which you receive shipments in-bound. What was that?

397 Mr. BARKELL. Kendallville.

By Mr. HARRY YOCKEY:

Q. Kendallville, Indiana.

A. Yes.

Q. Is that right?

A. Yes, sir.

Q. What is the weight of those shipments?

A. Oh, they will run from 300 to 500 pounds.

Q. And how frequently do you receive them?

A. Once a month.

Q. Now, then, on your out-bound shipments, will you name first the city where they go, and then name the commodity that goes to each city.

A. Moline-

Q. Illinois?

A. Illinois.

Q. Yes.

A. Replacement parts which go back to the factory.

Q. Return goods?

A. Yes.

Q. Continue.

A. Waterloo would be the same.

Q. Waterloo, Iowa.

A. Yes.

Q. The same.

A. Yes.

Q. The same commodity?

A. Yes, sir.

Q. Do you have shipments moving out-bound to any other point 'beside those two!

A. Nothing to speak of.

Q. Well, now then, as to Moline, Illinois; how frequently do you have out-bound shipments to that point?

A. Well, shipments to Moline would run, I would say-oh, pos-

sibly once every two months.

Q. And the average weight of those shipments?

A. Well, that would run, on an average, from about 500 to 800

Q. All right. To Waterloo, Iowa, how frequently do you have out-bound shipments?

A. Well-

Q. About once a month?

A. Yes, sir.

Q. And those are-

A. The weight?

Q. Yes.

A. Those are not quite so heavy. The will run, I would say, from about 300 pounds to 500 pounds.

By Mr. Des Roches:

. Q. 300 to 500 pounds?

A. Yes, sin

By Mr. HARRY YOCKEY:

Q. Now, all of these shipments that you have described, are moving over the Pennsylvania Rancoad at the present time, are they?

A. Yes, sir.

Q. How long have you been using the Pennsylvania Railroad?

A. We have been using that rail service for about 15 year. I would say, or since we have been in business.

Q. Have you had explained to you, have you had somebody explain to you about what the—well, strike that out, and let me ask another question. Your city of Conklin, Michigan, is located on the Pennsylvania Railroad between Grand Rapids and Muskegon, Michigan, is it not?

A. Yes.

Q. And that line is one of the lines that branch off the main line of the Pennsylvania Railroad.

A. Yes.

Q. Now, then, has it been explained to you that the rail oad proposes, through this Willett Company service, by putting a truck on between Grand Rapids and Muskegon, that it will expedite the movement of your in-bound and your out-bound shipments, by at least 24 hours?

A. Yes.

Q. Now, then, if that service is instituted; that is, the rail-truck service, and if it does expedite the movement of your shipments 24 hours, will that serve the convenience and necessity of your particular business.

400 A. Yes.

Q. Would you like to have that service instituted for your business?

A. I would.

Mr. HARRY YOCKEY. That is all.

Mr. BARKELL, Cross examine.

Cross-examination by Mr. Anderson:

Q. Mr. Dinkel-is that the name?

A. Yes, sir.

Q. Did I correctly understand you to say that you are getting all your shipments at the present time over the Pennsylvania Railroad?

A. Yes.

Q. All of your in-bound shipments?

A. Those mentioned; yes.

Q. You say, those mentioned?

A. Yes.

Q. Do you get any by motor vehicle?

A. Yes.

Q. What, for instance?

A. Well—

Q. And from where?

A. Lansing.

Q. What truck line?

A. Well, we get— Examiner Harrison. That is intrastate.

Mr. BARKELL. Yes.

Mr. Anderson. That is right.

B♥ Mr. Anderson:

Q. Well, Mr. Witness, do you get any shipments from any of these points at all by motor vehicle?

A. We have.

Q. What, for instance?

A. What point?

Q. Yes.

A. Milwaukee.

Q. Milwaukee.

A. Yes.

Q. What truck line?

A. Well, now, I wouldn't be able to tell you as to that. it delivered by Bishop, though, out of Grand Rapids.

Q. Bishop?

A. Yes.

Q. Has that service been satisfactory?

A. No.

Q. What about your Waterloo, Iowa, movement, which would come through the Chicago gateway?

A. How do you mean?

Q. Is there no truck line serving Conklin, Michigan, direct from Chicago?

A. Do we get that direct from Chicago?

402 Q. Yes.

A. No, sir. We just have a branch.

Q. A branch of what?

A. It is called Bishop.

Q. Bishop !:

A. Bishop Truck Lines. Q. Do you know where they operate from

A. Grand Rapids.

Q. From Grand Rapids? A. Yes.

Q. So that it would come to you, then, from Chicago—anything from Waterloo, Iowa, that is, that was consigned to you, if it came by truck, out of Chicago, at least—it would come from Chi-

esgo by what truck line?

A. I couldn't say. Q. But you say, as far as the delivery is concerned, that it comes to you by Bishop?

A. Yes.

Q. From Muskegon?

A. Grand Rapids.

Q. From Grand Rapids.

A. Yes.

Q. How large is your town?

A. About 400.

Q. About 400 people?

A. Approximately.

Q. You do not receive very many shipments from Indianapolis here, I believe you said.

A. Right.

Q. Not so much.

A. No.

Mr. Anderson. I believe that is all.

Mr. MOBERLY No questions.

By Mr. DES ROCHES:

Q. Are you getting store delivery at the present time?

A. Store delivery?

Q. Yes.

A. Yes.

Q. Who makes that delivery?

A. We have a pick-up truck there.

Q. What is the name of the pick-up company?

A. For the pick-up and delivery in town there?

Q. Yes: .

A. I operate that truck myself.

Q. Oh, you do that yourself.

A. Yes.

Q. You are working for The Pennsylvania Railroad Company at the present time, are you?

A. No, sir, I am not—well, I operate the truck, or my men do;
I hold the contract, and my men do the pick-up and

404 . delivery work.

Q. Well, then, you are making pick-ups and deliveries for The Pennsylvania Railroad Company at the present time, are you not?

A. Yes.

Q. Are you also making pick-ups and deliveries for other railroads in Conklin!

A. No.

Q. Is there any other railroad running into Conklin, or through Conklin?

A. Why, yes, sir; the Grand Trunk runs through there, but

they do not have any local trains that stop there.

Q. Have they promised you anything, or are you going to continue to take care of these deliveries if the proposed service has been put through?

A. There has been nothing said about it.

Q. No representations have been made to you whatsoever-

A. No.

Q. On that score !-

A. Nothing about any change.

Q. How is that?

A. I say, nothing about any change in it; no, sir. That has been going on now for several years, that we have been doing it.

Q. How many pieces of equipment are you using at the present time in connection with that pick-up and delivery service?

A. One.

Q. Just one?

A. That is all.

Q. Who asked you to appear here today?

A. A representative of The Pennsylvania Railroad.

Mr. DES ROCHES. That is all.

By Mr. CLARDY:

Q. Who was that representative?

A. Mr. Payne.

Q. Is the present service that you are receiving from the cities which you named, by railroad, satisfactory to you?

A. It is not.

Q. You do not like it?

A. That is, in one particular case it is not; no, sir.

Q. Which one is that?

A. From Milwaukee.

Is it too slow?

A. Yes, sir.

Q. But the other service which you are receiving from the other cities is satisfactory, is it?

A. Well, I have no particular fault to find with the other

service, I would say.

Q. Is the Bishop Truck Line the only truck line which operates through your town?

A. Yes.

Q. On what highway, or on what highways, is the town of Conklin located?

A. It isn't on any state highway.

Q. How is that?

A. It is off the state highway.

Q. Off what state highway?

A. Off 16.

Q. In what direction?

A. North.

Q. How far?

A. About seven miles.

What is the closest town ?-

A. Coopersville.

Q. Within how many miles of Coopersville are you?

A. About six or seven miles.

Q. What would be the town—or rather, which way are you located from Coopersville; east?

A. No; northwest.

Q. Northwest?

A. Or rather, northeast.

Q. Northeast of Coopersville?

A. Yes, sir.

Q. The Bishop Truck Lines has been serving that town for

quite a while, has it not?

A. Well, as far as the truck line itself is concerned, it has been changing names. It is Bishop at the present time, as far 407 as I know.

Q. You have been working for the railroad for about

how long?

A. For about four years.

· Q. And you do not anticipate any change in that relationship if this application is granted, do you?

A. Well, as I stated before, there has been nothing mentioned

to that effect; no, sir.

Q. Do you have any knowledge at all about the manner in which the operations will be conducted if this application is granted, other than that given to you by the representative of The Pennsylvania Railroad Company?

A. No.

Mr. HARRY YOCKEY. Now, just a moment. I want to object to going into that question.

Mr. BARKELL. Mr. Clardy is merely asking if he has any knowledge other than that. I see no objection to asking that question.

Exam. Harrison. He has answered the question, anyway.

Mr. HARRY YOCKEY, If he wants to go into that on his own account, all right, but it certainly is not proper cross-examination.

Mr. BARKELL. Oh, the witness may answer the question, if he has any other knowledge of it.

Mr. HARRY YOCKEY. If he wants to go into it, he will have to be bound by it.

OS The WITNESS. Let me see if I understand the question, now. Will you repeat it, please?

Mr. CLARDY. Read it.

(Question read.)

A. I have none.

BY Mr. CLARDY:

Q. Is your information, then, Witness, no more extensive than the mere statement that they expect, or hope, to shorten the time? A. That is right.

Q. But beyond that hope, as they expressed it to you, you have no knowledge; is that right?

A. That is right.

Mr. CLARDY. That is all.

Mr. BARKELL. Is there any further cross-examination of this witness?

Mr. King. Just one question.

By Mr. King:

Q. What is the distance, Mr. Witness, from Conklin to Mus-kegon, Michigan?

A. Conklin to Muskegon?

Q. Yes.

A. Oh, about 20 miles,

Q. There is water-carrier service available from Milwaukee, Wisconsin, to Muskegon, Michigan; is there not?

A. Yes; sir.

Q. Does Bishop operate to Muskegon!

409 . A. Between Muskegon and Grand Rapids.

· Mr. King. That is all.

Mr. Anderson. I would like to ask one further question if the Board please, on the present state of the record.

By Mr. ANDERSON:

Q. Mr. Witness, you did not fully state your business to this Joint Board and the Commission when you testified that you are in the farm equipment and hardware business, did you?

A. J believe I did.

Q. Well, did you not subsequently testify that you are in the local cartage business, performing pick-up and delivery service for the Pennsylvania Railroad?

Mr. HARRY Yeckey. Oh, now, I want to object to that. That

is mere quibbling by counsel.

Mr. Anderson. No; it is not. Mr. Clardy. Oh, no.

Mr. HARRY YOCKEY. I think the witness has testified fairly and frankly. Counsel is just merely arguing with the witness, now.

Mr. Anderson. The witness testified here, your Honors, that he is in the farm equipment and hardware business, and now it has been developed on the record here that he is in another business as well:

Mr. HARRY YOCKEY. He has told you that he is in two businesses.

410 Mr. Barkell. Is it your purpose, now, Mr. Anderson, to test the credibility of the witness!

Mr. Anderson. Yes.

Mr. BARKELL. Oh, I do not think that is necessary. I think the record is clear.

By Mr. ANDERSON:

Q. Well, Mr. Witness, you are now engaged in performing pickup and delivery service for the Pennsylvania Railroad; are you not?

A. Well

Mr. HARRY YOCKEY. Now, I want to object to that. The witness has already stated that.

Mr. Anderson. All right.

Mr. BARKELL. The record shows that.

By Mr. ANDERSON;

Q. Do you still have any other business in which you are engaged, besides the two which you have mentioned?

A. I have a farm.

Q. A farm?

A. Yes, sir.

Q. So that, as a matter of fact, then, Mr. Witness, you are in three businesses; are you not?

A. Why, you might say so.

Q. Which is the biggest of the three?

Mr. HARRY YOCKEY. Oh, now, if the Board please, I object to that as wholly immaterial, and just simply unnecessarily wasting time here.

411 Mr. BARKELL, Sustained.

Mr. Anderson. That is all.

Mr. BARKELL. Are there any further questions of the witness!

Mr. HARRY YOCKEY. That is all.

Mr. CLARDY. You have ruled, your Honor, but there is another question in this connection that I think should be asked, and I would like to ask it, and that is, does he get a substantial return from the railroad company for performing this service, and also, does that represent a substantial part of his total gross income.

Mr. HARRY YOCKEY. Well, now, just a moment. I want to ob-

ject to that as not being-well-

Mr. CLARDY. As showing bias.

Mr. HARRY YOCKEY. Well, there is no question-

Mr. Clarpy. I was addressing the Board.

Mr. HARRY YOCKEY. All right.

Mr. Clardy. The Board has ruled, and I have asked permission to ask another question; and I am merely suggesting what the question should be.

Mr. Anderson. Well, since I had the witness last, I will ask him

a further question, that I think is strictly proper.

By Mr. Anderson:

Q. Mr. Witness, if this application here should be granted, and The Willett Company should be authorized to serve Conklin, in view of the fact that you are engaged in performing pick-up and delivery service there for the Pennsylvania

Railroad Company, you will expect to get the pick-up and delivery business of the railroad company; will you not?

A. I would gladly turn it over to somebody else.

Q. Well, answer my question, please. You would expect to

have that business offered to you; would you not!

A. Oh, I would expect to have it offered me, yes, sir; having been there, and been doing their pick-up and delivery work for four years.

Mr. Anderson. Yes. That is all.

Mr. BARKELL. Is that all, Mr. Yockey?

Mr. HARRY YOCKEY. I have nothing further.

Mr. BARKELL. If there are no further questions, the witness is excused.

(Witness excused.)

Mr. BARKELL. Call your next.

Mr. HARRY YOCKEY. Mr. McDowell.

Mr. Eggers. Have you been sworn?

Mr. McDowell. No.

GEORGE M. McDowell was sworn and testified as follows:

Direct examination by Mr. HARRY YOCKEY:

Q. You may state your full name, please.

A. George M. McDowell.

Q. Where do you live?

A. Reed City.

Q. Reed City, Michigan?

A. Yes, sir.

413

By Mr. BARKELL:

Q. What point?

A. Reed City.

By Mr. HARRY YOCKEY:

Q. In what business are you engaged, Mr. McDowell?

A. Furniture and funeral directing.

Q. Whose business'is that?

A. My own, and my son's.

Q. Is your business located in Reed City!

A. Yes, sir.

By Mr. EGGERS:

Q. Furniture and what, again, please!

A. Funeral directing.

By Mr. HARRY YOCKEY:

Q. How long have you been engaged in that business there!

A. 31 years.

Q. And during that time, how long have you used the Penn-

. A. About 30 years.

Q. You understand, I take it, do you, Mr. McDowell, that the shipments that I will ask you about here, will be interstate shipments!

A. Yes, sir.

414 Q. Over the Pennsylvania Railroad!

A. Yes, sir.

Q. Now, then, do you have in-bound shipments?

A. Yes.

Q. And out-bound shipments also?

A. Very little out-bound.

Q. All right. Now, then, I will question you first with respect to your in-bound shipments. What are the points, and as you name the points, will you name the commodities also, from which you have in-bound shipments over the Pennsylvania Railroad, of any less than carload freight?

A. Chicago.

Q. What commodity?

A. Caskets.

Q. Do you have anything else from there?

A. Furniture.

Q. Now, then, the next point.

A. (No answer.)

Q. Do you receive any shipments from Galion, Ohio!

A. Yes.

Q. What?

A. Vaults.

Q. Steel vaults!

A. Yes, sir.

Q. Any other point?

415 A. (No answer.)

Q. Do you have anything from Milwaukee!

A. Yes.

Q. What!

A. Springs and mattresses.

Q. How about Nappanee, Indiana!

A. Chairs.

Q. Yes?

A. Louisville, Kentucky.

Q. What commodity? .

A. Breakfast room suites.

Q. Do you have anything from Huntington, Indiana?

A. Yes, sir, cedar chests and sewing cabinets.

Q. Now, then, your shipments from Chicago; how frequently do they come in?

A. Oh, about, I would say, 12 to 18 times per year.

Q. What is the average weight of those shipments?

A. The average weight of the shipments coming in from Chicago

would be about 400 pounds.

Q. And of your shipments from Galion, Ohio-or rather, first,

how frequently do they arrive!

A. About 12 times.

Q. About 12 times a year?

A. Yes, sir.

Q. That is about once a month.

416 A. Yes, sir.

Q. And what is the average weight of those shipments?

A. Oh, the average weight of the Galion shipments would be around 400 or 500 pounds.

Q. Now, as to your shipments from Milwankee; how frequently

do they come in?

- A. Well, we get about two to three of those shipments per year.
 - Q. What is their average weight?

A. About 500 pounds per shipment. Q. From Nappanee, Indiana?

A. About twice a year.

Q. And the weight?

A. About 150 pounds per shipments.

Q. From Huntington, Indiana?

A. Four to five times per year.

Q. And the average weight? A: 125 to 250 pounds,

Q. Per shipment?

A. Yes, sir.

Q. Now, from Louisville, Kentucky!

A. (No answer.)

Q. Just to refresh your recollection, Mr. McDowell, would that be about four or five times a year?

A. Well, Louisville, Kentucky, is-pardon me. What was that

question again, please?

417 Q. Would you say that your shipments come in to you from Louisville, Kentucky, about four or five times per-year?

A. Yes, sir.

Q. And what is the average weight of those shipments?

A. From 125 to 250 pounds.

Q. Now, has it been explained to you by any representative of the railroad company that—or rather, strike that out, and let me ask you this question: your town, Reed City, is located on the Pennsylvania Railroad between Grand Rapids and Cadillac, Michigan, is it not?

A. Yes, sir.

Q. Has it been explained to you by a representative of The Pennsylvania Railroad, that it is proposed by this application to put in a truck line between Cadillac and Grand Rapids, Michigan, and that there will be one truck operating each way per day by The Willett Company, which will carry the less-than-carload freight that was formerly carried on that route by the Pennsylvania Railroad local freight train?

A. Yes.

Q. And has it also been explained to you that by the institution of this rail-truck service by The Pennsylvania Railroad, your shipments will be expedited at least 24 hours?

A. Yes.

Q. Well, now then, if that service is instituted, and if your shipments are expedited in the manner that I have indi418 cated will that serve the convenience and necessity of your particular business?

A. Yes.

Q. Would you like to have such a service instituted?

A. Yes.

Q. And if the service is instituted, would you continue to use the service of the Pennsylvania Railroad?

A. Yes.

Mr. HARRY YOCKEY. That is all.

Mr. BARKELL. Cross-examine.

Cross-examination by Mr. Anderson:

Q. Mr. McDowell, did I correctly understand you to say that you have been in business there at Reed City for 31 years?

A. Yes.

Q. And your business is furniture and caskets?

A. Furniture and funeral directing, we call it.

Q. Furniture and funeral directing.

A. Yes, sir. Some might call it furniture and undertaking.

Q. I see.

- A. But we choose the other term, we speak of it the other way, as furniture and funeral directing.
- Q. Yes. Well, your business is satisfactorily served, so far as transportation is concerned, at the present time, is it not?

A Yes, sir: generally speaking.

Q. The transportation facilities which you have available from the Pennsylvania Railroad and all of the dif-

ferent truck lines that serve you, are adequate to meet your needs, are they not?

· A. Yes.

By Mr. HARRY YOCKEY:

Q. What was the answer?

A. Yes.

Mr. Anderson. He said "Yes."

Mr. BARKELL. Please speak a little louder, Mr. Witness.

The WITNESS, I will try.

By Mr. Anderson:

Q. In addition to the service of the Pennsylvania Railroad, going through Reed City, you have a number of truck lines, have you not?

A. Yes, sir.

Q. The service of which is likewise available to you.

A. Yes.

Q. Will you name some of them?

A. Associated; Interstate.

Q. Any others?

A. Dallas L. Darling.

By Exam. HARRISON:

Q. When you are naming those companies now, do they serve Reed City?

Mr. BARKELL. I was just going to ask the same question.

A. Well, some do and some do not.

Exam. Harrison. Well, Mr. Anderson asked you if they passed

through there:

The WITNESS. Oh, yes; they pass through there, but they don't all serve the town, if that is what you mean.

By Mr. Anderson:

Q. All right.

A. Not all of them.

Q. Will you just name for the records those that do serve Reed

City to your knowledge.

A Well, there is Dallas L. Darling, and Interstate Motor Freight, and—let me see, now. I don't think Doyle does. I don't think they serve Reed City, although possibly they do. I don't know for sure.

Q. You have service from Dallas L. Darling, and you have had for many years, have you not?

A. Yes.

Q. That service has always been satisfactory, has it not?

A. Yes.

Q. You have no complaint whatsoever, in connection with any shipments that Dallas L. Darling has ever handled for you, have you?

A. No.

Q. He gives you a prompt and efficient service on all of your shipments, does he not?

A. Yes.

Mr. Anderson. I believe that is all—or rather, pardon me. I forgot to ask you about Wolverine also.

By Mr. Anderson:

Q. You are served by Wolverine, are you not?

421 A. I don't know.

Q. You do not know about Wolverine?

A. No. sir.

Mr., Anderson. All right.

Mr. Moberly. No questions.

Mr. Des Roches. I have no questions.

By Mr. CLARDY:

Q. Witness, the only knowledge that you have about what may happen if this application is granted, is that which was imparted to you by some representative of the railroad company; is that correct?

A. Yes.

Q. Who was that representative?

A. I believe it was Mr. Payne.

Q. How long ago did he talk with you?

A. Probably two weeks.

Q. Would it make any difference to you as to the identity of the truck line that gives you the service that they discussed with you?

A. As to which line it would be?

Q. Yes.

A. No.

Q. It would not?

A. No, sir.

Q. You have been in Reed City for how many years?

A. 35.

22 Q. 35 years.

A. Yes.

Q. You do quite a lot of local intrastate business with the truck lines, do you not?

A. Yes.

Q. As a matter of fact, Witness, the large bulk of your business is intrastate business, is it not?

A. Yes.

Q. And the service which you have received thus far has amply taken care of your needs, has it not?

A. Not always.

Q. When was the last time that the Pennsylvania Railroad fell down in its service to you?

A. Never.

Q. It has never fallen down yet?

A. No.

Q. Then, the railroad has satisfactorily taken care of you at all times, has it?

A. Yes, sir.

Q. Was anything other than this proposed 24-hour saving in time, or whatever it was, discussed with you by the representative of the railroad company in asking you to come here and testify as a witness on behalf of the applicant?

A. No.

Q. Did the gentleman who talked to you go into any detail at all as to how they were going to accomplish that proposed saving?

A. Yes.

Q. How? A. With their truck.

Q. Pardon me?

A. Running with their freight train,

Q. I still do not get that, Witness.

A. I say, with their truck operating through there in conjunction with their freight train.

Q. Is that as far as he went?

A. As far as I remember; yes.

Q. Did he tell you, or did any other representative of the railroad tell you that they were going to completely discontinue the local, freight service?

A. No.

Q. You understand that that will continue also, do you?

A. Yes.

-Q. The representatives of the railroad company did not present to you, or call to your attention, did they, the information set forth in applicant's exhibit No. 4 in this case, with regard to the exact scheduled time of operation?

A. No.

Q. So that you do not have any present knowledge as to when the service will be rendered?

24 A. No.

- Q. If the application is granted.
- A: No. sir.

Q. By the way, Witness, do you have a pickup and delivery service there at Reed City?

A. Yes.

Q. Who operates that?

A. A man by the name of Irvin.

Q. He serves the railroad exclusively, does he?

A. Well-

Q. Or is he a general local dray man?

A. He is our local dray man.

Q. Serving anybody?

A. Yes.

Q. Who wants help.

A. Anybody who requires his service; yes.

Q. If your pickup and delivery service should not be continued after the railroad gets this authority, if it does, would that be satisfactory to you?

Mr. HARRY YOCKEY. Well, now, just a moment. I want to object. There has been no intimation in this case from any witness, or anybody else at all, that this service will be discontinued. It is not an element that is involved in this case. What the

relationship of The Pennsylvania Railroad may be with some other truck line, with respect to pickup and delivery service, is not involved here.

Mr. BARKELL. Read the question, please, Mr. Reporter.

(Question read.)

Mr. BARKELL. The objection will be overruled. The witness may answer the question.

By Mr. CLARDY:

Q. Do you understand the question?

A. Yes. Objection overruled.

Mr. CLARDY. Well, now, Witness, I do not blame you for being a little bit confused.

'The WITNESS. It is a tough job.

By Mr. CLARDY:

Q. Do you understand the question?

A. What is the question again?

Mr. BARKELL. Read it.

Mr. CLARDY. To save time, I will reframe it for you, Witness.

By Mr. CLARDY:

Q. My question was—and is—as to whether or not you would be satisfied with this proposed new service if they cut out the pickup and delivery service.

A. No.

Q. You would not be!

A. No. sir.

Mr. CLARDY. That is all.

Mr. BARKELL Is there any further cross examination of the witness? [No response.] Is there any redirect, Mr. Yockey!

426 - Mr. HARRY YOCKEY. No further questions.

Mr. BARKELL. If there are no further questions, the witness is excused.

(Witness excused.)

Mr. BARKELL. Call your next.

Mr. HARRY YOCKEY. If the Board please, may we be off the record for a moment?

Mr. BARKELL. Off the record.

(Discussion outside the record.)

Mr. BARKELL Back on the record.

Mr. Yockey. If the Joint Board please, it is stipulated and agreed by and between the applicant and protestants herein, by their respective counsel, that there are present in the hearing room at this time, for the purpose of testifying on behalf of the applicant, certain witnesses, which witnesses have been duly sworn, and, if called to the witness stand, would testify substantially as. hereinafter set forth in the written stipulations, copies of which are filed herein. It is hereby further stipulated and agreed that the written statements of proposed testimony of each of said applicant's witnesses for whom a written statement of testimony is submitted and made a part of the record herein, may be treated and considered as the testimony of each such witness, as though the same had been presented by formal testimony in question and answer form, and that the answers given on cross-examination by each such witness would generally and substantially be the same as the answers previously given by all of the applicant's shipper witnesses to questions propounded to them by protestants' attorneys this day. It is further stipulated and agreed that that portion of the testimony of the witness, Edward F. Dinkel, insofar as his testimony pertained to his service in performing pick-up and delivery service at Conklin, Michigan, for The Pennsylvania Railroad Company, shall not apply to the balance of the testimony of

the applicant's shipper witnesses. Said written stipulations, pertaining to the witnesses hereinafter enumerated,

are as follows:

H. L. Delp, Kendallville, Indiana.

Agreed and stipulated: That he is the traffic manager of Mc-Cray Refrigerator Company, a business which is engaged in the manufacturing of commercial refrigerators at Kendallville; Indiana. That he is acquainted with the out-bound shipments which his company ships, consisting of refrigerators, cooling rooms store

display counters.

That his business does now and has for several years used the services of The Pennsylvania Railroad Company over one of the routes described in the application, from Fort Wayne, Indiana, to Grand Rapids, Michigan, in interstate commerce.

That said outbound shipments which his company ships over The Pennsylvania Railroad from Kendallville, Indiana, are as follows: 400 shipments per month of refrigerators, cooling rooms, and store display counters to various cities and towns all over the United States; the average weight of each of such shipments is 1,000 pounds.

The witness has had explained to him the service to be rendered in the rail-truck service by the Willett Company of Irdiana, Inc., for The Pennsylvania Railroad Company over this route serving

his said business.

He has also had explained to him that this rail-truck 429 service serving his business, if instituted, will expedite the movement of the shipments to and from his business by The Pennsylvania Railroad Company 24 hours or more.

If the service is authorized by the Interstate Commerce Commission, it will serve the convenience and necessity of his business, and his business will continue to use the Pennsylvania Railroad service in conjunction with the rail-truck service described in the application.

D. M. Campbell, Kendallville, Indiana.

Agreed and stipulated: That he is one of the partners of Campbell & Company, a business which is engaged in selling dry goods, shoes, and ladies' wearing apparel, at Kendallville, Indiana.

That he is acquainted with the in-bound shipments which his company receives, consisting of dry goods, shoes, notions, and

ladies' wearing apparel, etc.

That his business does now and has for several years used the services of The Pennsylvania Railroad Company over one of the routes described in the application, from Fort Wayne, Indiana, to Grand Rapids, Michigan, in interstate commerce.

That the said in bound shipments which his business receives over the Pennsylvania Railroad at Kendallville, Indiana, are as

follows:

From Chicago, Illinois: Two shipments a week consisting of dry goods, floor coverings, clothing, and shoes; the average weight of each of such shipments is 200 to 500 pounds.

From New York City, New York: Two shipments a month consisting of dry goods and notions; the average weight of each of such shipments is 100 to 300 pounds.

From Baltimore, Maryland: One shipments a month consisting of seeds, the average weight of each of such shipments is 200 to 400 pounds.

From Cleveland, Ohio: One or two shipments a month consisting of dry goods and wearing apparel, the average weight of

each of such shipments is 50 to 150 pounds.

From Detroit, Michigan: Four shipments a year consisting of hats and notions, the average weight of each of such ship-

ments is 50 to 200 pounds.

From Boston, Massachusetts: One shipment a month consisting of shoes; the average weight of each of such shipments is

100 to 250 pounds.

The witness has had explained to him the service to be rendered in the rail-truck service by The Willett Company of Indiana, Inc., for The Pennsylvania Railroad Company over this route serving his business.

He has also had explained to him that this rail-truck service serving his business, if instituted, will expedite the movement of the shipments to and from his business by The Pennsylvania Rail-road Company 24 hours or more.

If such service is authorized by the Interstate Commerce Commission, it will serve the convenience and necessity

of his business, and his business will continue to use The Pennsylvania Railroad service in conjunction with the rail-truck service described in the application.

O. M. Warner, Howe, Indiana.

Agreed and stipulated: That he is one of the partners of C. M. Warner & Son, a business which is engaged in selling general hardware, stoves, etc., at Howe, Indiana.

That he is acquainted with the in-bound shipments which his company receives, consisting of general hardware, stoves, etc.

That he is acquainted with the out-bound shipments which his

company ships, consisting of empty gas tubes.

That his business does now and has for several years used the services of The Pennsylvania Railroad Company over one of the routes, described in the application, from Fort Wayne, Indiana, to Grand Rapids, Michigan, in interstate commerce.

That the said in-bound shipments which his business receives over The Pennsylvania Railroad at Howe, Indiana, are as follows:

From Cleveland, Ohio: Four shipments a month of general hardware items and stoves. The average weight of each of such shipments is from 200 to 400 pounds.

From Cincinnati, Ohio. Four shipments a year of stoves and stove pipes. The average weight of each of such shipments is

from 500 to 1,000 pounds.

432 From Chicago, Illinois: Five shipments a month of paint and gas tubes. The average weight of each of such shipments is from 200 to 1,200 pounds.

From Pittsburgh, Pennsylvania: Four shipments a year of general hardware items. The average weight of each of such

shipments is from 300 to 400 pounds.

From Erie, Pennsylvania: Ten shipments a year of pumps. The average weight of each of such shipments is from 200 to 400

pounds.

That the said out-bound shipments which his business ships over The Pennsylvania Railroad from Howe, Indiana, are as follows: From Chicago, Illinois—four shipments a month of empty gas tubes. The average weight of each of such shipments is 1,500 pounds.

The witness has had explained to him the service to be rendered in the rail-truck service by The Willett Company of Indiana, for the Pennsylvania Railroad Company over this route serving

his said business.

He has also had explained to him that this rail-truck service serving his business, if instituted, will expedite the movement of the shipments to and from his business by The Pennsylvania Railroad Company 24 hours or more.

If such service is authorized by the Interstate Commerce Commission, it will serve the convenience and necessity of his

business, and his business will continue to use the Pennsylvania Railroad service in conjunction with the rail-truck service described in the application.

C. F. McBride, Sturgis, Michigan.

Agreed and stipulat d: That he is the owner and operator of Max's Furniture Store, a business which is engaged in selling house furnishings and appliances at Sturgis, Michigan.

That he is acquainted with the in-bound shipments which his company receives, consisting of furniture and household ap-

pliances.

That his business does now and has for several years used the services of The Pennsylvania Railroad Company over one of the routes, described in the application, from Fort Wayne, Indiana, to Grand Rapids, Michigan, in interstate commerce.

That the said in-bound shipments which his business receives over The Pennsylvania Railroad at Sturgis, Michigan, are as

" follows:

From Martinsville, Virginia: One shipment a nonth of furniture. The average weight of each of such shipments is from 500 to 1,000 pounds. From Bassett, Virginia: One shipment a month of furniture. The average weight of each of such shipments is 500 to 1,000 pounds.

From Nappanee, Indiana: One shipment a month of cabinets. The average weight of each of such shipments is 200 pounds.

From Muncie, Indiana: One shipment a month of card tables and novelties. The average weight of each of such shipments is 200 pounds.

From Galax, Virginia: One shipment a month of furniture. The average weight of each of such shipments is 500 to 1,000

pounds.

From Chicago, Illinois: One shipment a month of lamps. The average weight of each of such shipments is 400 pounds.

From Sebring, Ohio: Three shipments a year of dishes. The

average weight of each of such shipments is 1,200 pounds.

The Witness has had explained to him the service to be rendered in the rail-truck service by The Willett Company of Indiana, Inc., for The Pennsylvania Railroad Company over this route serving his said business.

He has also had explained to him that this rail-truck service serving his business, if instituted, will expedite the movement of the shipments to and from his business by The Pennsylvania

Railroad Company 24 hours or more.

If such service is authorized by the Interstate Commerce Commission, it will serve the convenience and necessity of his business, and his business will continue to use the Pennsylvania Railroad service in conjunction with the rail-truck service described in the application.

Fred W. Hubner, Sturgis, Michigan.

Agreed and stipulated: That he is engaged in the business of plumber and the selling of plumbing supplies and sheet metal at Sturgis, Michigan.

That he is acquainted with the in-bound shipments which he receives, consisting of plumbing and heating supplies, stoves,

and general hardware items.

That he is acquainted with the out-bound shipments which he

ships, consisting of empty gas cylinders.

That he does now and has for several years used the services of The Pennsylvania Railroad Company over one of the routes described in the application, from Fort Wayne, Indiana, to Grand Rapids, Michigan, in interstate commerce.

That the said in-bound shipments which he receives over The

Pennsylvania Railroad at Sturgis, Michigan, are as follows:

From Fort Wayne, Indiana: Four to five shipments a month of plumbing and heating supplies; the average weight of each of such shipments is 200 to 400 pounds.

From Chicago, Illinois: Four shipments a month consisting of bottled gas and boilers; the average weight of each of such shipments is from 500 to 1,500 pounds.

From Louisville, Kentucky: Four to five shipments a year consisting of plumbing supplies; the average weight of each of such

shipments is from 200 to 400 pounds.

From Rockford, Illinois: One shipment a month of stoves; the average weight of each of such shipments is 400 pounds.

From Cleveland, Ohio: One shipment a month consisting of plumbing supplies and general hardware items; the average weight of each of such shipments is 400 to 600 pounds.

That the said out-bound shipments which he ships over the Pennsylvania Railroad from Sturgis, Michigan, are as follows: Two shipments a month of empty gas cylinders to Chicago, Illinois; the average weight of each of such shipments is 1,200 pounds.

The witness has had explained to him the service to be rendered in the rail-truck service by The Willett Company of Indiana, Inc., for The Pennsylvania Railroad Company over this route serving

his said business.

He has also had explained to him that this rail-truck service serving his business, if instituted, will expedite the movement of the shipments to and from his business by The Pennsylvania

Railroad Company 24 hours or more.

If such service is authorized by the Interstate Commerce Commission, it will serve the convenience and necessity of his business, and his business will continue to use the Pennsylvania Railroad service in conjunction with the rail-truck service described in the application.

C. A. Geble, Mendon, Michigan.

Agreed and stipulated: That he is the owner and operator of the Mendon Lumber and Coal Company, a business which is engaged in selling lumber, building supplies, and coal at Mendon, Michigan.

That he is acquainted with the in-bound shipments which his company receives, consisting of hardware, steel

roofing, doors, and millwork.

That his business does now and has for several years used the services of The Pennsylvania Railroad Company over one of the routes, described in the application, from Fort Wayne, Indiana, to Grand Rapids, Michigan, in interstate commerce.

That the said in-bound shipments which his business receives over the Pennsylvania Railroad at Mendon, Michigan, are as

follows:

From Sterling, Illinois: Three shipments a month of hard-The average weight of each of such shipments ware, and doors. is from 300 to 500 pounds.

From Toledo, Ohio: Two shipments a month of hardware. The average weight of each of such shipments is 300 to 500

pounds.

From Cincinnati, Ohio: Four to five shipments a month of steel roofing. The average weight of each of such shipments is

from 500 to 2,000 pounds.

From South Bend, Indiana: One two two shipments a month The average weight of each of such shipments is of millwork.

from 150 to 500 pounds.

The witness has had explained to him the service to be rendered in the rail-truck service by The Willett Company of Indiana, Inc., for The Pennsylvania Railroad Company over this

route serving his said business,

438 He has also had explained to him that this rail-truck service serving his business, if instituted, will expedite the movement of the shipments to and from his business by The Pennsylvania RailFoad Company 24 hours or more.

If such service is authorized by the Interstate Commerce Commission, it will serve the convenience and necessity of his business, and his business will continue to use the Pennsylvania Railroad service in conjunction with the rail-truck service described in the application.

R. G. Chew, Vicksburg, Michigan.

Agreed and stipulated: That he is the traffic manager of Lee Paper Company, a corporation, a business which is engaged in the manufacturing of paper at Vicksburg, Michigan.

That he is acquainted with the in-bound shipments which his company receives, consisting of machine rolls, mill supplies, chem-

icals, paper, and rags.

That he is acquainted with the out-bound shipments which his company ships, consisting of printing paper, and machinery for

repairs.

That his business does now and has for several years used the services of The Pennsylvania Railroad Company over one of the routes, described in the application, from Fort Wayne, Indiana, to Grand Rapids, Michigan, in interstate commerce.

That the said in-bound shipments which his business receives over the Pennsylvania Railroad at Vicksburg, Michigan,

439 are as follows:

From various points throughout the New England States and points along the eastern seaboard of the United States: sixty to seventy-five shipments a month of machine rolls, mill supplies,

pulp, paper, and rags. The average weight of each of such ship-

ments is from 400 to 500 pounds.

That said out-bound shipments which his business ships over the Pennsylvania Railroad from Vicksburg, Michigan, are as follows: thirty-five to forty shipments a month of printing paper and machinery for repairs to various points in the eastern, southern, and southwestern parts of the United States, and to a few points in the western part of the United States. The average weight of each of such shipments is from 400 to 600 pounds.

The witness has had explained to him the service to be rendered in the rail-truck service by The Willett Company of Indiana, Inc., for The Pennsylvania Railroad Company over this route serving

his said company.

He has also had explained to him that this rail-truck service serving his business, if instituted, will expedite the movement of the shipments to and from his business by The Pennsylvania Railroad Company 24 hours or more.

If such service is authorized by the Interstate Commerce Commission, it will serve the convenience and necessity of his busi-

ness, and his business will continue to use the Pennsylvania
Railroad service in conjunction with the rail-truck service
described in the application.

Homer Brumbaugh, Vicksburg, Michigan.

Agreed and stipulated: That he is the owner and operator of Brumbaugh's 5 Cents to \$1.00 Store, a business which is engaged in selfing retail merchandise at Vicksburg, Michigan.

That he is acquainted with the in-bound shipments which his company receives, consisting of miscellaneous merchandise, wall

paper, candy, paint, galvanized ware, etc.

That his business does now and has for several years used the services of The Pennsylvania Railroad Company over one of the routes, described in the application, from Fort Wayne, Indiana, to Grand Rapids, Michigan, in interstate commerce.

That the said in-bound shipments which his business receives over the Pennsylvania Railroad at Vicksburg, Michigan, are as

follows:

From Toledo, Ohio: Two shipments a month of miscellaneous merchandise. The average weight of each of such shipments is 150 to 300 pounds.

From Joliet, Illinois: Three shipments a year of wall paper. The average weight of each of such shipments is 2,000 pounds.

From Chicago, Illinois: Four shipments a month of miscellaneous merchandise. The average weight of each of such shipments is 100 to 200 pounds. From St. Louis, Missouri: One shipment a month of enamel ware, galvanized ware and paper ware. The average weight of

441 each of such shipments is 200 to 300 pounds.

Also from various points in the eastern part of the United States: four shipments a month of miscellaneous merchandise and novelties. The average weight of each of such shipments is 200 to 300 pounds.

The witness has had explained to him the service to be rendered in the rail-truck service by The Willett Company of Indiana, Inc., for The Pennsylvania Railroad Company over this route serving

his said business.

He has also had explained to him that this rail-truck service serving his business, if instituted, will expedite the movement of the shipments to and from his business by The Pennsylvania

Railroad Company, 24 hours or more.

If such service is authorized by the Interstate Commerce Commission, it will serve the convenience and necessity of his business, and his business will continue to use the Pennsylvania Railroad service in conjunction with the rail-truck service described in the application.

Robert S. Marshall, Martin, Michigan.

Agreed and stipulated: That he is the owner and operator of a funeral home and undertaking establishment at Martin, Michigan.

That he is acquainted with the in-bound shipments which his

company receives, consisting of caskets.

That his business does now and has for several years used the services of The Pennsylvania Railroad Company over one of the routes, described in the application, from Fort Wayne, Indiana, to Grand Rapids, Michigan, in interstate commerce.

That the said in-bound shipments which his business receives over the Pennsylvania Reilroad at Martin, Michigan, are as follows:

From Cambridge City, Indiana: One shipment a month of caskets. The average weight of each of such shipments is from 300 to 500 pounds.

From Milton, Indiana: One shipment a month of caskets, the

average weight of which is from 300 to 500 pounds.

From Batesville, Indiana: One shipment a month of caskets, the average weight of which is from 300 to 500 pounds.

From Brookville, Indiana: One shipment a month of caskets,

the average weight of which is from 300 to 500 pounds.

From Connersville, Indiana; One shipment a month of caskets, the average weight of which is from 300 to 500 pounds.

From Chicago, Illinois: One shipment a month of caskets, the werage weight of which is from 300 to 500 pounds.

The witness has had explained to him the service to be rendered in the rail-truck service by The Willett Company of Indiana, Inc., for the Pennsylvania Railroad Company over this route serving his said business.

He has also had explained to him that this rail-truck service serving his business, if instituted, will expedite the movement

of the shipments to and from his business by The Penn-

443 sylvania Railroad Company 24 hours or more.

If such service is authorized by the Interstate Commerce Commission, it will serve the convenience and necessity of his business, and his business will continue to use the Pennsylvania Railroad service in conjunction with the rail-truck service described in the application.

Harry Elenbaas, Wayland, Michigan.

Agreed and stipulated:

That he is one of the partners of Elenbaas Bros., a business which is engaged in the operation of a flour mill and grain elevator at Wayland, Michigan.

That he is acquainted with the in-bound shipments which his company received, consisting of feed, seeds, poultry equipment,

etc.

That his business does now and has for several years used the services of The Pennsylvania Railroad Company over one of the routes described in the application, from Fort Wayne, Indiana, to Grand Rapids, Michigan, in interstate commerce.

That the said in-bound shipments which his business receives over the Pennsylvania Railroad at Wayland, Michigan, are as

follows:

From Toledo, Ohio: One shipment a month consisting of feed; the average weight of each of such shipments is 4,000 pounds.

From South Whitley, Indiana: Two shipments a month of concentrate; the average weight of each of such shipments is 500 pounds.

From Port Wayne, Indiana: Two shipments a month during the months of April, May, and June, of seed; the average weight of each of such shipments is 500 pounds.

From Milwaukee, Wisconsin: Ten shipments a year of seed; the average weight of each of such shipments is from 500 to 2,000

pounds.

From Rockford, Illinois: Three shipments a year of poultry equipment; the average weight of each of such shipments is 100 to 200 pounds.

From Chicago, Illinois: Fifteen shipments a year consisting of seeds and feeds; the average weight of each of such shipments is 1,000 to 2,000 pounds.

From Grand Rapids, Iowa: Two shipments a year of mineral feed; the average weight of each of such shipments is 1,000 pounds.

The witness has had explained to him the service to be rendered in the rail-truck service by The Willett Company of Indiana, Inc., for The Pennsylvania Railroad Company over this route serving his said business.

He has also had explained to him that this rail-truck service serving his business, if instituted, will expedite the movement of the shipments to and from his business by The Pennsylvania

Railroad Company 24 hours or more.

If such service is authorized by the Interstate Commerce Commission, it will serve the convenience and necessity of his business, and his business will continue to use the Pennsylvania Railroad service in conjunction with the rail-truck service described in the application.

John Haveman, Moline, Michigan.

Agreed and stipulated: That he is one of the partners of Haveman Bros., a business which is engaged in selling general merchandise at Moline, Michigan.

That he is acquainted with the in-bound shipments which his company receives, consisting of general merchandise including

paint, hardware, and groceries.

That his business does now and has for several years used the services of The Pennsylvania Railroad Company over one of the routes, described in the application, from Fort Wayne, Indiana, to Grand Rapids, Michigan, in interstate commerce.

That the said in-bound shipments which his business receives over the Pennsylvania Railroad at Moline, Michigan, are as fol-

lows:

From Chicago, Illinois: Three shipments a month of paint and groceries. The average weight of each of such shipments is from 200 to 300 pounds.

From Decatur, Illinois: Three shipments a year of general hardware. The average weight of each of such shipments is 200.

pounds.

The witness has had explained to him the service to be 446 rendered in the rail-truck service by the Willett Company of Indiana, Inc., for The Pennsylvania Railroad Company over this route serving his said business.

He has also had explained to him that this rail-truck service serving his business, if instituted, will expedite the movement of the shipments to and from his business by The Pennsylvania Rail-road Company 24 hours or more.

If such service is authorized by the Interstate Commerce Commission, it will serve the convenience and necessity of his busi-

ness, and his business will continue to use the Pennsylvania Railroad service in conjunction with the rail-truck service described in the application.

Charles M. Turner, Rockford, Michigan.

Agreed and stipulated: That he is secretary and manager of Rockford Co-Operative Company, a business which is engaged as a farmers' co-operative association, at Rockford, Michigan.

That he is acquainted with the in-bound shipments which his company receives, consisting of farm machinery, fence material,

barn equipment, etc.

That his business does now and has for several years used the services of The Pennsylvania Railroad Company over one of the routes described in the application, from Grand Rapids, Michigan, to Cadillac, Michigan, in interstate commerce.

That the said in-bound shipments which his business receives over the Pennsylvania Railroad at Rockford, Michigan, are as

follows:

447 From Harvard, Indiana: Three or four shipments a year consisting of barn equipment and stock tanks; the average weight of each of such shipments is 150 to 200 pounds.

From Crawfordsville, Indiana: Five shipments a year consisting of fence and fencing materials; the average weight of each of such shipments is 400 pounds or more.

From Milwaukee, Wisconsin: Three or four shipments a year consisting of barn equipment and stock tanks; the average weight

of each of such shipments is 150 to 200 pounds.

The witness has had explained to him the service to be rendered in the rail-truck service by The Willett Company of Indiana, Inc., for The Pennsylvania Railroad Company, over this route serving his said business.

He has also had explained to him that this rail-truck service serving his business, if instituted, will expedite the movement of the shipments to and from his business by The Pennsylvania Rail-

read Company 24 hours or more.

If such service is authorized by the Interstate Commerce Commission, it will serve the convenience and necessity of this business, and his business will continue to use the service of the Pennsylvania Railroad in conjunction with the rail-truck service described in the application.

John M. Rau, Cedar Springs, Michigan.

Agreed and stipulated: That he is one of the partners of Van-Schelven-Rau, a business which is engaged in selling general hardware, steel roofing and stoves at Cedar Springs, Michi-

That he is acquainted with the in-bound shipments which his company receives, consisting of general hardware, steel roofing, and stoves.

That his-business does now and has for several years used the services of The Pennsylvania Railroad Company over one of the routes, described in the application, from Grand Rapids, Michigan, to Cadillac, Michigan, in interstate commerce.

That the said in-bound shipments which his business receives over the Pennsylvania Railroad at Cedar Strings, Michigan, are

as follows:

From Cleveland, Ohio: One shipment a week of general hardware, the average weight of which is 1 ton.

From Milwaukee, Wisconsin: One shipment a week of steel roofing, the average weight of which is 500 pounds.

From Indianapolis, Indiana: One shipment a week of stoves, the average weight of which is 1,000 pounds.

From Chicago, Illinois: One shipment a week of general hardware, the average weight of which is 1,000 pounds.

From South Bend, Indiana: One shipment a week of stoves,

the average weight of which is 1,000 pounds.

The witness has had explained to him the service to be rendered in the rail-truck service by The Willett Company of Indiana, Inc., for The Pennsylvania Railroad Company over this route serving his said business.

He has also had explained to him that this rail-truck service serving his business, if instituted, will expedite the movement of the shipments to and from his business by The Penn-

sylvania Railroad Company 24 hours or more.

If such service is authorized by the Interstate Commerce Commission, it will serve the convenience and necessity of his business, and his business will continue to use the Pennsylvania Railroad service in conjunction with the rail-truck service described in the application.

L. W. Sawnyer, Sand Lake, Michigan.

Agreed and stipulated: That he oversees and looks after the traffic of the Bear Point Company, a business which is engaged in the manufacturing of paints and asphalt products at Sand Lake, Michigan.

That he is acquainted with the in-bound and out-bound shipments of his company; that he receives shipments consisting of pails, asbestos, and materials used in the manufacture of paints,

and makes out-bound shipments of paint:

That his business does now and has for several years used the services of The Pennsylvania Railroad Company over one of the routes described in the application, from Grand Rapids, Michigan, to Cadillac, Michigan, in interstate commerce.

That the said in-bound shipments which his business receives over the Pennsylvania Railroad at Sand Lake, Michigan, are as follows:

450 From Chicago, Illinois: Eight to ten shipments for the period from March to July, of pails and asbestos; the average weight of each of such shipments is from 500 to 4,000 pounds.

From Barber, New Jersey: Four to five shipments a year of barrels of gilsonite (material used in the manufacture of paint); the average weight of each of such shipments is 1,000 pounds.

That the said out-bound shipments which his business ships over the Pennsylvania Railroad from Sand Lake, Michigan, are as follows: one to six shipments daily during the season covering the months from March to July, of paint used inside of pickle burgels to points and places in the States of Texas, Indiana, Wisconsin, Louisiana, North Carolina, South Carolina, Colorado, Alabama, Georgia, Maine, and any other states where canners are located, and to all states where pickles are grown. The average weight of each of such shipments is from 300 to 500 pounds.

The witness has had explained to him the service to be rendered in the rail-truck service by the Willett Company of Indiana, Inc., for The Pennsylvania Railroad Company over this route serving his said business.

· He has also had explained to him that this rail-truck service serving his business, if instituted, will expedite the move-

ment of the shipments to and from his business by The

451 Pennsylvania Railroad Company 24 hours or more.

If such service is authorized by the Interstate Commerce Commission, it will serve the convenience and necessity of his business and his business will continue to use the Pennsylvania Railroad service in conjunction with the rail-truck service described in the application.

Lloyd S. Reynolds, Howard City, Michigan.

Agreed and stipulated: The he is the owner of Reynold's Drug Store, a business which is engaged in selling drugs and sundries, and fountain supplies.

That his business does now and has for several years used the services of The Pennsylvania Railroad Company over one of the routes described in the application, from Grand Rapids, Michigan, to Cadillac, Michigan, in interstate commerce.

That the said inbound shipments which his business receives over the Pennsylvania Railroad at Howard City, Michigan, are as follows:

From Chicago, Illinois: One to two shipments a week of drugs and sundries, the average weight of which is 400 pounds.

From St. Louis, Missouri: Four shipments a year of drugs and sundries, the average weight of each of such shipments is 1,200 pounds.

From Boston, Massachusetts: One shipment a year of fountain

supplies, the average weight of which is 1,000 pounds.

The witness has had explained to him the service to be rendered in the rail-truck so ice by The Willett Company of Indiana, Inc., for The Pennsylvania Railroad Company

over this route serving his said business.

He has also had explained to him that this rail-truck service serving his business, if instituted, will expedite the movement of the shipments to and from his business by The Pennsylvania Railroad Company 24 hours or more.

If such service is authorized by the Interstate Commerce Commission, it will serve the convenience and necessity of his business, and his business will continue to use the Pennsylvania Railroad service in conjunction with the rail-truck service described in the application.

Ralph Jennings, Howard City, Michigan.

Agreed and stipulated: That he is the owner of Jennings' Hard-ware Store, a business which is engaged in selling hardware, electrical appliances, paint, and automobile accessories at Howard City, Michigan.

That he is acquainted with the in-bound shipments which his company receives, consisting of hardware, electrical appliances, paint, and automobile accessories at Howard City, Michigan.

That his business does now and has for several years used the services of The Pennsylvania Railroad Company over one of the routes, described in the application; from Grand Rapids, Michigan, to Cadillac, Michigan, in interstate commerce.

That the said in-bound shipments which his business receives over the Pennsylvania Railroad at Howard City,

Michigan, are as follows:

From Chicago, Illinois: One shipment a month of paints and batteries, the average weight of which is from 300 pounds to 1 ton.

From Decatur, Indiana: Six or eight shipments a month of general hardware items, the average weight of which is 400 pounds.

From Toledo, Ohio: Two or three shipments a year of general bardware items. The average weight of each of such shipments

is from 400 to 500 pounds.

From Hammond, Indiana: One shipments a year of livestock remedies, the average weight of which is from 50 to 75 pounds.

The witness has had explained to him the service to be rendered in the rail-truck service by The Willett Company of Indiana, Inc.,

for The Pennsylvania Railroad Company over this route serv-

ing his said business.

He has also had explained to him that this rail-truck service serving his business, if instituted, will expedite the movement of the shipments to and from his business by The Pennsylvania Railroad Company 24 hours or more.

If such service is authorized by the Interstate Commerce Commission, it will serve the convenience and necessity of his business, and his business will continue to use the Pennsylvania Rail-

road service in conjunction with the rail-truck service de-

N. F. Croff, Morley, Michigan.

Agreed and stipulated: That he is the owner of Croff Hardware and Roofing, a business which is engaged in selling hardware, steel roofing, pumps, pipes, windmills, and oil stoves.

That his business does now and has for several years used the services of The Pennsylvania Railroad Company over one of the routes, described in the application, from Grand Rapids, Michigan, to Cadillac, Michigan, in interstate commerce.

That the said in-bound shipment which his business receives over the Pennsylvania Railroad at Morley, Michigan, are as

follows:

From Harvey, Illinois: Two or three shipments a year of barn-door tracks and accessories: The average weight of each of such shipments is from 300 to 500 points.

From Kendallville, Indiana: One shipment a month of pumps, pipes, and windmills, the average weight of which is from 400

to 600 pounds.

From Butler, Indiana: Three or four shipments a year of pumps, the everage weight of each of such shipments is 100 pounds.

From Cleveland, Ohio: Five shipments a year of oil stoves. The average weight of each of such shipments is from 100 to 500 pounds.

The witness has had explained to him the service to be rendered in the rail-truck service by The Willett Company of Indiana, Inc., for The Pennsylvania Railroad Company

over this route serving his said business.

He has also had explained to him that this rail-truck service serving his business, if instituted, will expedite the movement of the shipments to and from his business by The Pennsylvania Rail-road Company 24 hours or more.

If such service is authorized by the Interstate Commerce Commission, it will serve the convenience and necessity of his business, and his business will continue to use the Pennsylvania Rail-

road service in conjunction with the rail-truck service described in the application.

Fred Brack, Stanwood, Michigan.

Agreed and stipulated: That he is the manager of Stanwood Marketing Association, a business which is engaged as a farmers' cooperative association selling grain, feed, seed, fertilizer, oil, machinery, electrical appliances, fencing materials, paint, harness, beans and potatoes, etc., at Stanwood, Michigan.

That he is acquainted with the in-bound shipments which his company receives, consisting of farm machinery, oil, grease, fly

spray, etc.

That his business does now and has for several years used the services of The Pennsylvania Railroad Company over one of the routes, described in the application, from Grand Rapids,

Michigan, to Cadillac, Michigan, in interstate commerce.

That the said in-bound shipments which his business receives over the Pennsylvania Railroad at Stanwood, Michigan, are as follows:

From Chicago, Illinois: Six shipments a year of farm machinery and seeds. The average weight of each of such shipments

is 100 pounds.

From Muncie, Pennsylvania: Three shipments a year of grinding wares for the mill. The average weight of each of such ship-

ments is 100 pounds.

From Cleveland, Ohio: One shipment a month of repair parts for the mill and farm machinery. The average weight of each of such shipments is from 10 to 100 pounds.

From Indianapolis, Indiana: Two shipments a month of oil, grease, and fly spray. The average weight of each of such ship-

ments is from 200 to 2,000 pounds.

From Mansfield, Ohio: Two shipments a year of farm tools. The average weight of each of such shipments is from 1,000 to 1,200 pounds.

From Coldwater, Ohio: Six shipments a year of farm machinery, repair parts. The average weight of each of such ship-

ments is 140 to 200 pounds.

The Witness has had explained to him the service to be rendered in the rail-truck service by The Willett Company of Indiana.

Inc., for The Pennsylvania Railroad Company over this

route serving his said business.

He has also had explained to him that this rail-truck service serving his business, if instituted, will expedite the movement of the shipments to and from his business by The Pennsylvania Railroad Company 24 hours or more.

If such service is authorized by the Interstate Commerce Co.n-mission, it will serve the convenience and necessity of his busi-

ness, and his business will continue to use the Pennsylvania Railroad service in conjunction with the rail-truck service described in the application.

S. D. Longeor, Big Rapids, Michian.

Agreed and stipulated: That he is the manager of Judson's Hardware Company at Big Rapids, Michigan, a business which is engaged in selling general hardware, electrical appliances, gift merchandise, etc.

That he is aquainted with the in-bound shipments which his company receives, consisting of general hardware, electrical ap-

pliances, gift merchandise, etc.

That his business does now and has for several years used the services of The Pennsylvania Railroad Company over one of the routes described in the application, from Grand Rapids, Michigan, to Cadillac, Michigan, in interstate commerce.

That the said in-bound shipments which his business receives over the Pennsylvania Railroad at Big Rapids, are as follows:

From Chicago, Illinois: Five or six shipments a year 458 consisting of nails, sheet steel, tubs, etc., and galvanized hardware; the average weight of each of such shipments is from 500 to 8,000 pounds.

From Chicago, Illinois: One shipment every two or three weeks consisting of plumbing supplies; the average weight of each of

such shipments is from 500 to 2,000 pounds.

From Wheatland, Pennsylvania: Four or five shipments a year consisting of pipe; the average weight of each of such shipments is 500 to 2,000 pounds or more.

From Joliet, Illinois: Two or three shipments a year consisting of wall paper, the average weight of each of such shipments is

three hundred pounds.

From Chester, Virginia: Two shipments a year consisting of chinaware; the average weight of each of such shipments is 350 pounds.

From Chicago, Illinois: One shipment every two weeks, consisting of paint; the average weight of each of such shipments is 100.

to 5,000 pounds.

From Georgetown, Connecticut: One shipment a year consisting of screen wire cloth; the average weight of each of such shipments is 500 pounds or more.

From Chicago, Illinois: Four shipments a year consisting of general merchandise and gift merchandise; the average weight

of each of such shipments is 50 pounds.

The witness has had explained to him the service to be rendered in the rail-truck service by The Willett Company of Indiana, Inc., for The Pennsylvania Railroad Company over this route serving his said business.

He has also had explained to him that this rail-truck service serving his business, if instituted, will expedite the movement of the shipments to and from his business by The Pennsylvania

Railroad Company 24 hours or more.

If such service is authorized by the Interstate Commerce Commission, it will serve the convenience and necessity of his business, and his business will continue to use the Pennsylvania Railroad service in conjunction with the rail-truck service described in the application.

Urban Whalen, Big Rapids, Michigan.

Agreed and stipulated; That he is the shipping clerk of Good Housekeeping Shop, a business which is engaged in selling furniture, floor coverings and electrical appliances at Big Rapids, Michigan.

That he is acquainted with the in-bound shipments which his company receives, consisting of floor coverings, furniture and

eléctrical appliances.

That his business does now and has for several years used the services of The Pennsylvania Railroad Company over one of the routes described in the application, from Grand Rapids, Michigan to Cadillac, Michigan, in interstate commerce.

That the said in-bound shipments which his company receives over the Pennsylvania Railroad at Big Rapids,

are as follows:

From Galaz, Virginia: Five shipments a year consisting of furniture, the average weight of each of such shipments is 1,000 pounds.

From Indianapolis, Indiana: Five shipments a year consisting of furniture, the average weight of each of such shipments

is 1,000 pounds.

From Chicago, Illinois: Three shipments a year consisting of bed furnishings, the average weight of each of such shipments

is 500 pounds.

From Warsaw, Indiana: Three shipments a year, consisting of furniture, the average weight of each of such shipments is 100 pounds.

From Richmond, Indiana: Six shipments a year consisting of furniture, the average weight of each of such shipments is

800 pounds.

From Knoxville, Tennessee: Three shipments a year consisting of furniture, the average weight of each of such shipments is 1,000 pounds.

From Desbrose, New York: Four shipments a year, consisting of lamps, the average weight of each of such shipments is 200 pounds.

From Broadville, Illinois: Five shipments a year consisting of furniture, the average weight of each of such shipments is 400 pounds.

461 From Milwaukee, Wisconsin: Seven shipments a year consisting of bedding, the average weight of each of such

shipments is 1,500 pounds.

From Galva, Illinois: Two shipments a year consisting of display material, the average weight of each of such shipments is 100 pounds.

From Union City, Indiana: Six shipments a year consisting of furniture, the average weight of each of such shipments is from 400 pounds up.

From Jasper, Indiana: Five shipments a year consisting of furniture, the average weight of each of such shipments is 600

pounds.

The witness has had explained to him the service to be rendered in the rail-truck service by The Willett Company of Indiana, Inc., for The Pennsylvania Railroad Company over this route serving his said business.

He has also had explained to him that this rail-truck service serving his business, if instituted, will expedite the movement of the shipments to and from his business by The Pennsylvania

Railroad Company 24 hours or more.

If such service is authorized by the Interstate Commerce Commission, it will serve the convenience and necessity of his business, and his business will continue to use the Pennsylvania Railroad service in conjunction with the rail-truck service de-

scribed in the application.

462 Charles W. Dean, LeRoy, Michigan.

Agreed and stipulated: That he is engaged in business as an individual selling memorial monuments and grave markers at LeRoy, Michigan.

That he is acquainted with the in-bound shipments which he receives consisting of monuments, grave markers, and memorials.

That he does now and has for several years used the services of The Pennsylvania Railroad Company over one of the routes, described in the application, from Cadillac, Michigan, to Grand Rapids, Michigan, in interstate commerce.

That the said in-bound shipments which he receives over the Pennsylvania Railroad at LeRoy, Michigan, are as follows:

From Delano, Minnesota: Four shipments a month consisting of monuments, grave markers, and memorials; the average weight of each of such shipments is 300 to 2,000 pounds.

From Knoxville, Tennessee: Two shipments a month consisting of monuments, grave markers, and memorials; the average weight

of each of such shipments is 300 to 2,000 pounds.

The witness has had explained to him the service to be rendered in the rail-truck service by The Willett Company of Indiana, Inc., for The Pennsylvania Railroad Company over this route serving his said business:

He has also had explained to him that this rail-truck service serving his business, if instituted, will expedite the movement of the shipments to and from his business by The Pennsylvania Railroad Company 24 hours or more.

If such service is authorized by the Interstate Commerce Commission, it will serve the convenience and necessity of his business, and his business will continue to use the Pennsylvania Railroad service in conjunction with the rail-truck service described in the application.

Lynn Matteson, Tustin, Michigan.

Agreed and stipulated: That he is engaged in the business of a plumber and well driller at Tustin, Michigan.

That he is acquainted with the in-bound shipments which he

receives consisting of windmills, pipe fittings, pumps, etc.

That his business does now and has for several years used the services of The Pennsylvania Railroad Company over one of the routes, described in the application, from Grand Rapids, Michigan, to Cadillac, Michigan, in interstate commerce.

That the said in-bound shipments which his business receives over the Pennsylvania Railroad at Tustin, Michigan, are as fol-

lows:

From Kendallville, Indiana: Two to three shipments a month of windmills, pipe fittings, and pumps. The average weight of each of such shipments is from 300 to 400 pounds.

From Chicago, Illinois: One shipment a week of windmills, pipe fittings, and pumps. The average weight of such shipments is

from 300 to 400 pounds.

The witness has had explained to him the service to be rendered in the rail-truck service by The Willett Company of Indiana, Inc., for The Pennsylvania Railroad Company over this route serving his said business.

He has also had explained to him that this rail-truck service serving his business, if instituted, will expedite the movement of the shipments to and from his business by The Pennsylvania Rail-

road Company 24 hours or more.

. If such service is authorized by the Interstate Commerce Commission, it will serve the convenience and necessity of his business, and his business will continue to use the Pennsylvania Rail-

road service in conjunction with the rail-truck service described in the application.

Thomas Berghouse, Falmouth, Michigan.

Agreed and stipulated: That he is the general manager of Falmouth Co-Operative Co., which is engaged as a farmers' cooperative association selling grain, feed, seed, fertilizer, oil, machinery, electrical appliances, fencing materials, paint, harness, etc., at Falmouth, Michigan.

That he is acquainted with the in-bound shipments which his company received, consisting of farm machinery, oil, grease, roof-

ing, tires, etc.

That his business does now and has for several years used the services of The Pennsylvania Railroad Company over one of the

routes described in the application, from Lake City, Michi-

465 gan, to Manton, Michigan, in interstate commerce.

That the said inbound shipments which his business receives over the Pennsylvania Railroad at Falmouth, Michigan, are as follows:

From Chicago, Illinois: Four shipments a year consisting of repair parts. The average weight of each of such shipments is

200 pounds.

From De Pere, Wisconsin: Two shipments a year consisting of silo filler. The average weight of each of such shipments is 857 pounds.

From South Bend, Indiana: Nine shipments a year consiting of farm machinery. The average weight of each of such ship-

ments is 236 pounds.

From Crawfordsville, Indiana: Four shipments a year consisting of machinery repairs. The average weight of each of such shipments is 65 pounds.

From Poughkeepsie, New York: Seven shipments a year consisting of cream separators. The average weight of each of such

shipments is 200 pounds.

From Toledo, Ohio: Five shipments a year consisting of milkers. The average weight of each of such shipments is 188 pounds.

From Akron, Ohio: One shipment a year consisting of tires. The average weight of each of such shipments is 256 pounds.

From Indianapolis, Indiana: One shipment a year of oil
The average weight of each of such shipments is 90 pounds

From Springfield, Ohio: Five shipments a year consisting of farm machinery. The average weight of each of such shipments is 100 pounds.

From Valparaiso, Indiana: Two shipments a year consisting of farm machinery. The average weight of each of such shipments is 437 pounds.

From Milwaukee, Wisconsin: One shipment a year consisting of seeds. The average weight of each of such shipments is 423

pounds.

The witness has had explained to him the service to be rendered in the rail-truck service by The Willett Company of Indiana, Inc., for The Pennsylvania Railroad Company over this route serving his said business.

He has also had explained to him that this rail-truck service serving his business, if instituted, will expedite the movement of the shipments to and from his business by The Pennsylvania

Railroad Company 24 hours or more.

If such service is authorized by the Interstate Commerce Commission, it will serve the convenience and necessity of his business, and his business will continue to use the Pennsylvania Railroad service in conjunction with the rail-truck service described in the application.

George H. Bayes, Manton, Michigan.

Agreed and stipulated: That he is the owner and operator of a photographic studio at Manton, Michigan.

That he is acquainted with the in-bound shipments which

he receives, consisting of photographic supplies.

That his business does now and has for several years used the services of The Pennsylvania Railroad Company over one of the routes, described in the application, from Lake City, Michigan, to Manton, Michigan, in interstate commerce.

That the said in-bound shipments which he receives over the Pennsylvania Railroad at Manton, Michigan, are as follows: one or two shipments a month of photographic supplies from Chicago, Illinois. The average weight of each of such shipments is from

50 to 100 pounds.

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The witness has had explained to him the service to be rendered in the rail-truck service by The Willett Company of Indiana, Inc., for The Pennsylvania Railroad Company over this route serving his said business:

He has also had explained to him that this rail-truck service serving his business, if instituted, will expedite the movement of the shipments to and from his business by The Pennsylvania

Railroad Company 24 hours or more.

If such service is authorized by the Interstate Commerce Commission, it will serve the convenience and necessity of his business, and his business will continue to use the Pennsylvania Railroad service in conjunction with the rail-truck service described in the application.

Charles C. Hoeflin, Kingsley, Michigan.

Agreed and stipulated: The he is the owner of Hoeflin Hardware Store, at Kingsley, Michigan, a business which is engaged in selling general hardware, pumps, etc.

That he is acquainted with the in-bound shipments which his company receives, consisting of general hardware, pumps, dishes,

etc.

That his business does now and has for several years used the services of The Pennsylvania Railroad Company over one of the routes described in the application, from Cadillac, Michigan, to Traverse City, Michigan, in interstate commerce,

That the said in-bound shipments which his business receives over the Pennsylvania Railroad at Hingsley, Michigan, are as

follows:

From Chicago, Illinois: One to two shipments a year consisting of general hardware; the weight of each of such shipments is 150 to 200 pounds.

From Kendallville, Indiana: Six to eight shipments a year consisting of pumps and pipe supplies; the average weight of

such shipments is 120 to 200 pounds.

From Peoria, Illinois: Two to three shipments a year consisting of crockery and dishes; the average weight of each of such shipments is 100 or more.

The witness has had explained to him the service to be rendered in the rail-truck service by The Willett Company of 469 Indiana, Inc., for The Pennsylvania Railroad Company

over this route serving his said business.

He has also had explained to him that this rail-truck service serving his business, if instituted, will expedite the movement of the shipments to and from his business by The Pennsylvania Railroad 24 hours or more.

If such service is authorized by the Interstate Commerce Commission, it will serve the convenience and necessity of his business, and his business will continue to use the Pennsylvania Railroad service in conjunction with the rail-truck service described in the application.

John L. Novak, Traverse City, Michigan.

Agreed and stipulated: That he is the secretary and general manager of Acmeline Manufacturing Co., a business which is engaged in the manufacturing of farm tools and implements, fly sprays, tubes for smoke bombs for war purposes, etc., at Traverse City, Michigan.

That he is acquainted with the in-bound shipments which his company receives, consisting of materials used in the manufacture

of commodities such as paint, castings, rubber lose, etc.

That he is acquainted with the out-bound shipments which his company ships, consisting of farm tools and implements, fly sprays, and tubes for smoke bombs for war purposes.

That his business does now and has for several years used the services of The Pennsylvania Railroad Company over one of the routes, described in the application, from Cadillac, Michigan, to Traverse City, Michigan, in interstate com-

merce.

That the said in-bound shipments which his business receives over the Pennsylvania Railroad at Traverse City, Michigan, are as follows:

From Baltimore, Maryland: One shipment a month of tin can seews. The average weight of each of such shipments is 1,000

pounds.

From New Brunswick, New Jersey: One shipment a month of tin can screws. The average weight of each of such shipments is 100 pounds.

From Stamford, Connecticut: One shipment every two weeks of leather caps. The average weight of each of such shipments

is from 300 to 1,000 pounds.

From Pittsburgh, Pennsylvania: Two shipments a year of steel bolts and nuts. The average weight of each of such shipments is 5,000 pounds. Also two shipments a year of cork washers. The average weight of each of such shipments is from 300 to 400 pounds.

From Philadelphia, Pennsylvania: Two shipments a year consisting of thread cutting oil and brushes. The average weight

of each of such shipments is from 500 to 1,000 pounds.

From St. Louis, Missouri: One to two shipments a week of castings. The average weight of each of such shipments is from 500 to 4,000 pounds.

471 From Cleveland, Ohio: Six shipments a year consisting of paints, miscellaneous hardware items, and steel. The average weight of each of such shipments is from 3,000 to 5,000 pounds.

From Auburn, New York: One to two shipments a week of leather caps. The average weight of each of such shipments is from 2,000 to 5,000 pounds.

From Conshocken, New York: Four shipments a year of rubber hose. The average weight of each of such shipments is from

3,000 to 8,000 pounds.

That the said outbound shipments which his business ships over the Pennsylvania Railroad from Traverse City, Michigan, are as follows: from four to fifteen or twenty shipments daily consisting of farm tools and implements, and fly sprays to various points in every state in the United States. The average weight of the total tonnage of all of such shipments for a particular day is 2,500 pounds. Regular shipments of tubes used for smoke bombs by the Canadian Government, the average weight and frequency of such shipments cannot be given because of war restrictions.

The witness has had explained to him the service to be rendered in the rail-truck service by The Willett Company of Indiana, Inc., for The Pennsylvania Railroad Company over this route serving his said business.

He has also had explained to him that this rail-truck service serving his business, if instituted, will expedite the movement of

the shipments to and from his business by The Pennsylvania

472 Railroad Company 24 hours or more.

If such service is authorized by the Interstate Commerce Commission, it will serve the convenience and necessity of his business, and his business will continue to use the Pennsylvania Railroad service in conjunction with the rail-truck service described in the application.

Parker Hobbs, Traverse City, Michigan,

Agreed and stipulated: That he oversees and looks after traffic of the John C. Morgan Company, a business which is engaged in canning and distributing food products at Traverse City, Michigan.

That he is acquainted with the outbound shipments which his

company ships, consisting of canned food products.

That he is acquainted with the inbound shipments which his company receives, consisting of materials used in the preservation and canning of food products.

That his business does now and has for several years used the services of The Pennsylvania Railroad Company over one of the routes described in the application, from Cadillac, Michigan, to Traverse City, Michigan, in interstate commerce.

That the said inbound shipments which his business receives over the Pennsylvania Railroad at Traverse City, Michigan, are as

follows:

From New York City, New York: One shipment a month of flavoring syrup: the average weight of each of such shipments is 50 to 60 pounds.

From Mt. Gilead, Ohio: Two or three shipments a season in the fall of the year consisting of chemicals; the average

weight of each of such shipments is 100 pounds.

From Chicago, Illinois: Two or three shipments a year consisting of flavoring syrup; the average weight of each of such shipments is 50 to 100 pounds.

From Buffalo, New York: Two or three shipments a year consisting of maintenance parts used in our factory; the average-weight of each of such shipments is 25 pounds or more. a

From Brooklyn, New York: One shipment a year consisting of press cloths; the average weight of each of such shipments is 1.500 pounds, and one shipment a month for five months of the ear of reagent (ingredient used in the preservation of food stuffs); the average weight of each of shch shipments is from 500 to 600 pounds.

That the said outbound shipments which his company ships over the Pennsylvania Railroad from Traverse City, Michigan, are as follows: Six or eight shipments of canned food products daily to points and places located in forty-four of the forty-eight states of the United States. The average weight of all of such ship-

ments for a particular day is one ton.

The witness has had explained to him the service to be rendered in the rail-truck service by The Willett Company of Indiana Inc., for The Pennsylvania Railroad Company over this

route serving his said business.

He has also had explained to him that this rail-truck service serving his business, if instituted, will expedite the movement of the shipments to and from his business by The Pennsylvania Railroad service in conjunction with the rail-truck service described in the application.

Gordon D. Aldridge, South Boardman, Michigan.

Agreed and stipulated: That he is the owner and operator of a business which is engaged in selling groceries, general merchandise, and hardware at South Boardman, Michigan.

That he is acquainted with the inbound shipments which his company receives, consisting of general merchandise and hard-

ware.

That his business does now and has for seevral years used the services of The Pennsylvania, Railroad Company over one of the routes described in the application, from Cadillac, Michigan, to Mackinaw City; Michigan, in interstate commerce.

That the said inbound shipments which his company receives over the Pennsylvania Railroad at South Boardman, Michigan,

are as follows:

From Chicago, Illinois: One shipment per month of general merchandise and pumps and overalls; the average weight of each of such shipments is 300 pounds:

From Berne, Indiana: Six to eight shipments per year of overalls, the average weight of each of such shipments is 150 pounds.

From Quincy, Illinois: Just started handling stoves and have received one shipment weighing 250 pounds so far this year.

The witness has had explained to him the service to be rendered in the rail-truck service by the The Willett Company of Indiana, Inc., for The Pennsylvania Railroad Company over this route serving his said business.

He has also had explained to him that this rail-truck service serving his business, if instituted, will expedite the movement of the shipments to and from his business by The Pennsylvania Rail-

road Company 24 hours or more.

If such service is authorized by the Interstate Commerce Commission, it will serve the convenience and necessity of his business, and his business will continue to use the Pennsylvania Railroad in conjunction with the rail-truck service described in the application.

Fred H. Tompkins, Kalkaska, Michigan.

Agreed and stipulated: That-he is the owner of a business which is engaged in selling general hardware, furniture, and plumbing supplies at Kalkaska, Michigan.

That he is acquainted with the in-bound shipments which his company receives, consisting of general hardware, furniture, and

plumbing supplies.

That his business does now and has for several years used the services of The Pennsylvania Railroad Company over one of the routes described in the application, from

Cadillac, Michigan, to Mackinaw City, Michigan, in interstate

commerce.

That the said in-bound shipments which his business receives over the Pennsylvania Railroad at Kalkaska, Michigan, are as follows:

From Chicago, Illinois: Four to five shipments a week in the summertime consisting of plumbing materials such as bathtubs, etc., the average weight of each of such shipments is from 200 to 300 pounds.

From Cincinnati, Ohio: Eight to ten shipments a year of sheet metal roofing, the average weight of each of such shipments is

from 800 to 1,000 pounds.

From Indianapolis, Indiana: Two shipments a year of general hardware items and stoves, the average weight of each of such shipments is from 500 to 1,000 pounds.

From Owensboro, Kentucky: One shipment a year of breakfast sets, (furniture), the average weight of each of such shipments

being 500 to 600 pounds.

From Nappanee, Indiana: Two shipments a year of high-chairs, the average weight of each of such shipments being 600 to 700 pounds.

From Kendallville, Indiana: Two to five shipments a year of steel chairs and wind mills, the average weight of each of such shipments being 1,000 pounds.

From Elyria, Ohio: Two or three shipments a year of steel chairs, the average weight of each of such shipments

being 200 to 300 pounds.

The witness has had explained to him the service to be rendered in the rail-truck service by The Willett Company of Indiana, Inc., for The Pennsylvania Railroad Company over this route serving his said business.

He has also had explained to him, that this rail-truck service serving his business, if instituted, will expedite the movement of the shipments to and from his business by The Pennsylvania Rail-

road Company 24 hours or more.

If such service is authorized by the Interstate Commerce Commission, it will serve the convenience and necessity of his business and his business will continue to use the Pennsylvania Railroad service in conjunction with the rail-truck service described in the application.

J. Donald Wisler, Mancelona, Michigan.

Agreed and stipulated: That he is employed as a clerk by his father, who owns and operates the Wisler Hardware Company, a business which is engaged in selling general hardware and farm implements at Mancelona, Michigan.

That he is acquainted with the inbound shipments which his company receiveds, consisting of general hardware and farm im-

plements.

That his business does now and has for several years used the services of The Pennsylvania Railroad Company over one of the routes described in the application, from Cadillac, Michigan, to Mackinaw City, Michigan, in interstate commerce.

That the said in-bound shipments which his business receives over the Pennsylvania Railroad at Mancelona, Michigan, are as follows:

From Chicago, Illinois: One shipment a month of roofing, the average weight of each of such shipments being 1,800 pounds or more.

From Kendallville, Indiana: One shipment a month of pumps and tanks, the average weight of each of such shipments is 400 to 500 pounds.

From Toledo, Ohio: One shipment a month of glass, the average weight of each of such shipments is from 300 pounds up.

From Milwaukee, Wisconsin: One shipment a month of stoves, the average weight of each of such shipments is from 250 to 600 pounds.

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From Cincinnati, Ohio: Three to four shipments a year of stoves, the average weight of each of such shipments is from 250

to 600 pounds.

The witness has had explained to him the service to be rendered in the rail-truck service by The Willett Company of Indiana, Inc., for The Pennsylvania Railroad Company over this route serving his said business.

He has also had explained to him that this rail-truck service serving his business, if instituted, will expedite the movement of the shipments to and from his business by

The Pennsylvania Railroad Company 24 hours or more.

If such service is authorized by the Interstate Commerce Commission, it will serve the convenience and necessity of his business, and his business will continue to use the Pennsylvania Railroad service in conjunction with the rail-truck service described in the application.

J. D. Rusnell, Alba, Michigan. .

Agreed and stipulated: That he is one of the partners of Rusnell's Garage and Farm Implements, a business which is engaged in the repairing of automobiles and selling farm implements at Alba, Michigan.

That he is acquainted with the in-bound shipments which his company receives, consisting of automobile repair parts and ac-

cessories and farm machinery and implements.

That his business does now and has for several years used the services of The Pennsylvania Railroad Company over one of the routes described in the application from Cadillac, Michigan, to Mackinaw City, Michigan, in interstate commerce.

That the said in-bound shipments which his business receives over the Pennsylvania Railroad at Alba, Michigan are as follows:

From Chicago, Illinois: Twelve to eighteen shipments a year of automobile accessories and farm machinery and implements, the average weight of each of such shipments is 200 pounds.

From Fort Wayne, Indiana: Twelve shipments a year of farm machinery and implements; the average weight of

each of such shipments is 800 to 900 pounds.

The witness has had explained to him the service to be rendered in the rail-truck service by The Willett Company of Indiana, Inc., for The Pennsylvania Railroad Company over this route serving his said business.

He has also had explained to him that this rail-truck service serving his business, if instituted, will expedite the movement of the shipments to and from his business by The Pennsylvania Railroad Company by 24 hours or more.

If such service is authorized by the Interstate Commerce Commission, it will serve the convenience and necessity of his busi-

ness, and his business will continue to use the Pennsylvania Railroad service in conjunction with the rail-truck service described , in the application.

Glenn S. Bain, Petoskey, Michigan.

Agreed and stipulated: That he is secretary of the Bremmeyr-Bain Co., a business which is engaged in the wholesale selling of hardware, plumbing, and electrical supplies at Petoskey, Michigan.

That he is acquainted with the in bound shipments which his company receives, coin sink of general hardware, plumbing sup-

plies, stoves, electrical appliances, etc.

That his business does now and has for several years used the services of The Pennsylvania Railroad Company over 481 one of the routes, described in the application, from Cadillac, Michigan, to Machinaw City, Michigan, in interstate commerce.

That the said in-bound shipments which his business receives over the Pennsylvania Railroad at Petoskey, Michigan are as

follows:

From Ford City, Pennsylvania: One shipment a month of ' plumbing supplies. The average weight of each of such shipments is from 2,000 to 3,000 pounds, up to 6,000 pounds.

From Lancaster, Pennsylvania: One or more shipments a week The average weight of each of such shipments is of linoleum.

2 tons or more.

From Pittsburgh, Pennsylvania: Two or three shipments a month, consisting of nails, wire, and glass. The average weight of each of such shipments is 1,000 to 2,000 pounds.

From Toledo, Ohio: One shipment a week of general hardware items. The average weight of each of such shipments is two

tons.

From Cleveland, Ohio: Ten to twelve shipments a year of stoves. The average weight of each of such shipments is 1,000 pounds.

From Niagara Falls, New York: Two to three shipments a month of roofing. The average weight of each of such shipments is 3 tons.

From Versailles, Illinois: Two or three shipments a month of roofing. The average weight of each of such shipments is 3 482tons.

From Akron, Ohio: Six shipments a year consisting of rubber goods, such as hose, belts, and packings. The average weight of each of such shipments is 2 tons.

From Warren, Pennsylvania: Four shipments a year of tools.

The average weight of each of such shipments is 2 tons:

From Piqua, Ohio: Eight shipments a year of steel goods and The average weight of each of such shipments is 1,000 shovels: pounds.

From Columbus, Ohio: Four shipments a year of steel goods, and pitchforks. The average weight of each of such shipments is 1,000 pounds.

From Trenton, New Jersey: Two to three shipments a year of electrical appliances. The average weight of each of such ship-

ments is 2 tons or more.

From Long Island, New York: One shipment a month of electrical appliances. The average weight of each of such shipments is 1 ton or more.

From Chicago, Illinois: One shipment or more daily consisting of lamps, stoves, pipe, furniture and radios. The average weight

of each of such shipments is 1 to 2 tons.

From Milwaukee, Wisconsin: Ten to twelve shipments a year of granite ware. The average weight of each of such shipments is 2 tons.

From Goshen, Indiana: Eight shipments a year of stepladders. The average weight of each of such shipments is 2 tons.

From Rome, New York: Two to three shipments a month of electrical appliances. The average weight of each of such shipments is 2 tons or more.

From Indianapolis, Indiana: Two to three shipments a month of washing machines. The average weight of each of such shipments is 2 tons or more.

From Dayton, Ohio: Two to three shipments a month of paint. The average weight of each of such shipments is 2 tons or more.

From Blue Island, Illinois: Two to three shipments a month of wire. The average weight of each of such shipments is 2 tons or more.

From Wheeling, West Virginia: Two to three shipments a month of steel roofing. The average weight of each of such shipments is 2 tons or more.

The witness has had explained to him the service to be rendered in the rail-truck service by The Willett Company of Indiana, Inc., for The Pennsylvania Railroad Company over this route serving his said business.

He has also had explained to him that this rail-truck service serving his business, if instituted, will expedite the movement of the shipments to and from his business by The Pennsylvania Railroad Company 24 hours or more.

If such service is authorized by the Interstate Commerce
484 Commission, it will serve the convenience and necessity of
his business, and his business will continue to use the Pennsylvania Railroad service in conjunction with the rail-truck serv-

ice described in the application.

Herman C. Meyer, Petoskey, Michigan.

Agreed and stipulated: That he is the owner of a hardware and farm implement business at Petoskey, Michigan.

That he is acquainted with the in-bound shipments which his company receives, consisting of general hardware and farm im-

plements.

That his business does now and has for several years used the services of The Pennsylvania Railroad Company over one of the routes described in the application, from Cadillac, Michigan, to Mackinaw City, Michigan, in interstate commerce.

That the said in-bound shipments which his business receives over the Pennsylvania Railroad at Petoskey, Michigan, are as

follows:

From Kendallville, Indiana: One or two shipments a month of pumps and water systems. The average weight of each of

such shipments is from 700 to 1,000 pounds.

From Chicago, Illinois: Six shipments a month, or it may be for 12 a month of general hardware, plumbing, stoves, and sporting goods. The average weight of each of such shipments is from 200 to 1,000 pounds.

From Franklin, Tennessee: Two shipments a year of stoves. The average weight of each of such shipments

is 1.500 pounds.

From Moline, Illinois: Occasional shipments of farm machinery parts. The average weight of each of such shipments is 100 pounds or more.

From Cincinnati, Ohio: Two or three shipments a month of stoves and belting. The average weight of each of such ship-

ments is from 200 to 1,000 pounds.

From Toledo, Ohio: Two to three shipments a month during the season or six to eight a year of separator parts and oil. The average weight of each of such shipments is 1,000 pounds or more.

The Witness has had explained to him the service to be rendered in the rail-truck service by The Willett Company of Indiana, Inc., for The Pennsylvania Railroad Company over this

route serving his said business.

He has also had explained to him that this rail-truck service serving his business, if instituted, will expedite the movement of the shipments to and from his business by The Pennsylvania Railroad Company 24 hours or more.

If such service is authorized by the Interstate Commerce Commission, it will serve the convenience and necessity of his business, and his business will continue to use the Pennsylvania Railroad service in conjunction with the rail-truck service de-

scribed in the application.

August Schwertfeger, Harbor Springs, Michigan.

Agreed and stipulated: That he is one of the partners of Harbor Springs Furniture Co., a business which is engaged in selling furniture and house furnishings at Harbor Springs, Michigan.

That he is acquainted with the in-bound shipments which his company receives, consisting of furniture and house fur-

nishings.

That his business does now and has for several years used the services of The Pennsylvania Railroad Company over one of the routes, described in the application, from Cadillac, Michigan, to Mackinaw City, Michigan, in interstate commerce.

That the said in-bound shipments which his business receives over the Pennsylvania Railroad at Harbor Springs, Michigan,

are as follows:

From Chicago, Illinois: Twelve or thirteen shipments a year of window shades and blinds. The average weight of each of such shipments is 700 pounds or more.

From Kenosha, Wisconsin: Fifteen or sixteen shipments a year of beds, mattresses, and porch gliders. The average weight of

each of such shipments is 1,000 to 1,200 pounds.

From Ripon, Wisconsin: Six shipments a year of washing machines. The average weight of each of such shipments is 350 pounds.

From Duluth, Minnesota: Twelve shipments a year of rugs. The average weight of each of such shipments is 500 to 600

pounds.

From New York City, New York: One shipment a year of shoes and slippers, the average weight of which is 150 pounds.

From Goshen. Indiana: One or two shipments a year of playground equipment. The average weight of each of such

shipments is from 200 to 300 pounds.

From Cincinnati, Ohio: Three or four a year of bamboo and wrought-iron furniture. The average weight of each of such

shipments is from 400 to 600 or 700 pounds.

The witness has had explained to him the service to be rendered in the rail-truck service by The Willett Company of Indian., Inc., for The Pennsylvania Railroad Company over this reserving his said business.

He has also had explained to him that this rail-truck service, serving his business, if instituted, will expedite the movement of the shipments to and from his business by The Pennsylvania

Railroad Company 24 hours or more.

If such service is authorized by the Interstate Commerce Commission, it will serve the convenience and necessity of his business, and his business will continue to use the Pennsylvania Rail-

road service in conjunction with rail-truck service described in the application.

Leon B. Wlrond, Harbor Springs, Michigan.

Agreed and stipulated: That he is secretary and treasurer of Wlrond, Friend & Cassiday Hardware Company, a business which is engaged in selling general hardware at Harbor Springs, Michigan.

That he is acquainted with the in-bound shipments which his company receives, consisting of general hardware, sheet

That his business does now and has for several years used the services of The Pennsylvania Railroad Company over one of the routes described in the application, from Cadillac, Michigan, to Mackinaw City, Michigan, in interstate commerce.

That the said in-bound shipments which his business receives over the Pennsylvania Railroad at Harbor Springs, Michigan, are as follows:

From Chicago, Illinois: General hardware, pipe, and pipe fittings, one shipment a day during the summer time, and one shipment every two weeks during the winter time; the average weight of each of such shipments is 300 to 1,500 pounds.

From Milwaukee, Wisconsin: One shipment a day during the summer time and one shipment every two weeks during the winter time, consisting of general hardware, pipe, and pipe fittings; the average weight of each of such shipments is 300 to 1,500 pounds.

From Kendallville, Indiana: One shipment a day during the summer time and one shipment every two weeks during the winter time, consisting of general hardware, pipe, and pipe fittings; the average weight of each of such shipments is 300 to 1,500 pounds. From Youngstown, Ohio: One shipment a week during the summer time and one shipment every two weeks during the winter

time, consisting of sheet metal, tin, steel, and tubes: the average weight of each of such shipments is 150 pounds.

The witness has had explained to him the service to be rendered in the rail-truck service by The Willett Company of Indiana, Inc., for The Pennsylvania Railroad Company over this route serving his said business.

He has also had explained to him that this rail-truck service serving his business, if instituted, will expedite the movement of the shipments to and from his business by The Pennsylvania

Railroad Company 24 hours or more,

If such service is authorized by the Interstate Commerce Commission, it will serve the convenience and necessity of his business, and his business will continue to use the Pennsylvania Railroad service in conjunction with the rail-truck service described in the application.

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Clifford Fairbairn, Alanson, Michigan.

Agreed and stipulated: That he is one of the partners of W. W. Fairbairn & Sons, a business which is engaged in selling general hardware and plumbing supplies at Alanson, Michigan.

That he is acquainted with the in-bound shipments which his company receives, consisting of general hardware; gloves, electrical

appliances, etc.

That his business does now and has for several years used the services of The Pennsylvania Railroad Company over one of the routes, described in the application, from Cadillac, Michi-

gan, to Mackinaw City, Michigan, in interstate commerce.

That the said inbound shipment which his business receives over the Pennsylvania Railroad at Alanson, Michigan

gan, are as follows:

From Chicago, Illinois: One shipment every two weeks during the summer, consisting of paint and general hardware items, pipe, fittings, radios, etc. The average weight of each of such shipments is from 300 to 500 pounds.

From Ashland, Ohio: One shipment a month from January 1 to September 15 of automatic water systems. The average weight

of each of such shipments is 350 pounds.

From Dubuque, Iowa: One to two shipments a year of gloves. The average weight of each of such shipments is 150 pounds.

From Minneapolis, Minnesota: One shipment a year of seed. The average weight of each of such shipments is from 150 to 300 pounds.

From Milwaukee, Wisconsin: Five to six shipments a year of steel goods, such as bar iron, shovels, etc. The average weight of

each of such shipments is from 200 to 300 pounds.

From Wheeling, West Virginia: Three shipments a year consisting of galvanized ware and roofing. The average weight of each of such shipments is 300 pounds or more.

From Cincinnati, Ohio: One shipment a month of steel roofing and stoves. The average weight of each of such shipments is

1,200 pounds to 1,500 pounds.

From Shelbyville, Indiana: Two shipments a year of lawn mowers. The average weight of each of such shipments is 300 pounds.

From Indianapolis, Indiana: One shipment a year of stoves. The average weight of each of such shipments is from 500 to 600

pounds.

The witness has had explained to him the service to be rendered in the rail-truck service by The Willett Company of Indiana, Inc., for The Pennsylvania Railroad Company over this route serving his said business. He has also had explained to him that this rail-truck service serving his business, if instituted, will expedite the movement of the shipments to and from his business by The Pennsylvania

Railroad Company 24 hours or more.

If such service is authorized by the Interstate Commerce Commission, it will serve the convenience and necessity of his business, and his business will continue to use the Pennsylvania Railroad service in conjunction with the rail-truck service described in the application.

Ralph D. Walker, Levering, Michigan.

Agreed and stipulated: That he is one of the partners of J. J. Walker & Sons, a business which is engaged in selling general merchandise at Levering, Michigan.

That he is acquainted with the inbound shipments which his

company receives, consisting of general merchandise.

That his business does now and has for several years used the services of The Pennsylvania Railroad Company over one of the routes described in the application, from Cadillac, Michigan, to Mackinaw City, Michigan, in interstate commerce.

That the said inbound shipments which his business receives over the Pennsylvania Railroad at Levering, Michigan, are as

follows:

From Chicago, Illinois: Two shipments a month consisting of groceries and coffee; the average weight of each of such shipments is 150 pounds.

From Berne, Indiana: Four shipments a year consisting of drygoods; the average weight of each of such shipments is from

75 to 150 pounds.

The witness has had explained to him the service to be rendered in the rail-truck service by The Willett Company of Indiana, Inc., for The Pennsylvania Railroad Company over this route serving his said business.

He has also had explained to him that this rail-truck service serving his business, if instituted, will expedite the movement of the shipments to and from his business by The Pennsylvania

Railroad Company 24 hours or more.

If such service is authorized by the Interstate Commerce Commission, it will serve the convenience and necessity of his business, and his business will continue to use the Pennsylvania Railroad service, in conjunction with the rail-truck service described in the application.

L. H. Liebeck, Mackinaw City, Michigan.

- Agreed and stipulated: That he is the owner and operator of a meat and grocery store at Mackinaw City, Michigan.

That he is acquainted with the in-bound shipments which he

receives, consisting of gloves, soap, paper bags, etc.

That his business does now and has for several years used the services of The Pennsylvania Railroad Company over one of the routes, described in the application, from Cadillac, Michigan, to Mackinaw City, Michigan, in interstate commerce.

That the said in-bound shipments which his business receives over the Pennsylvania Railroad at Mackinaw City, Michigan,

are as follows: 3

From Fort Wayne, Indianar one shipment a week of paper and paper bags, and picnic dishes, the average weight of which is from 200 to 400 pounds.

From Berne, Indiana: One shipment a year of gloves, the aver-

age weight of which is 150 pounds.

From Jeffersonville, Indiana: Two shipments a year of soap. The average weight of each of such shipments is 200 to 250 pounds.

The witness has had explained to him the service to be rendered in the rail-truck service by The Willett Company of Indiana, Inc., for The Pennsylvania Railroad Company over this route serving his said business.

He has also had explained to him that this rail-truck service serving his business, if instituted, will expedite the movement of the shipments to and from his business by The Pennsylvania Railroad Company 24 hours or more.

If such service is authorized by the Interstate Commerce Commission, it will serve the convenience and necessity of his business, and his business will continue to use the Pennsylvania Rail-

road service in conjunction with the rail-truck service described in the application.

Mr. Clardy. Now, your Honors, we have entered into these stipulations, and thus shortened very materially the trial of the proceeding, but we still have another witness to be cross examined. I want it shown on the record that our agreeing to the stipulations was conditioned upon the agreement of counsel, pursuant to their discussion off the record, with respect to a further hearing in this matter.

Mr. HARRY YOCKEY. For the protestants to introduce their evi-

dence, if any.

Mr. BARKELL. Yes. Where does that leave us now, Mr. Yockey,

as far as the applicant is concerned?

Mr. HARRY YOCKEY. That, your Honor, leaves us in this position, as far as the applicant is concerned, that Mr. McArdle is to be recalled, to testify to the financial statement; and Mr. Christie is to be recalled for cross examination. Do you gentlemen want to cross examine Mr. McArdle on the financial statement?

495 Mr. Moberly. We have not seen it yet.

Mr. DES ROCHES. We would like to see it.

Mr. HARRY YOCKEY. Well, then, that leaves Mr. McArdle and Mr. Christie.

Mr. BARKELL. Now, gentlemen, let us give the Reporter a chance, please.

Mr. CLARDY. And not talk two at a time.

Mr. BARKELL. No, one at a time.

Mr. Clardy. May I make this further suggestion, your Honor: undoubtedly all of the witnesses will not realize the full import of what we have done here, and I think that it might be wise, therefore, for the Chairman, as well as counsel for the applicant, to let them know that, if they desire, their testimony has been taken care of, and they may be excused. As far as we are concerned, they may be excused, and I assume that some of them, at least, very probably want to be about their business.

Mr. HARRY YOCKEY. If the Board please, may we be off the rec-

ord a moment?

Mr. BARKELL Off the record.
(Discussion outside the record.)

Mr. BARKELL. Back on the record. Let the record show, Mr. Reporter, that we are now recessing, to reconvene at 2 o'clock this afternoon.

(At 12 o'clock noon, recess until 2 o'clock p. m,)

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AFTER RECESS

The hearing was resumed pursuant to recess, 2 o'clock p. m. Mr. Barkell. Come to order, gentlemen. Are you ready to proceed, Mr. Yockey?

Mr. HARRY YOCKEY. Yes.

Mr. BARKELL, Is Mr. McArdle here?

Mr. HARRY YOCKEY. Yes. Will you take the stand again, please, Mr. McArdle?

J. P. McARDLE recalled:

Direct examination by Mr. HARRY YOCKEY:

Q. You are the same Mr. McArdle who has been previously sworn and testified in this proceeding, are you?

A. Yes.

Mr. HARRY YOCKEY. Do you gentlemen want to cross examine Mr. McArdle on the financial statement?

Mr. Des Roches. I do not care to. .

Mr. HARRY YOCKEY. Apparently, your Honor, counsel for protestants do not want to cross examine Mr. McArdle.

Mr. Eggers. This is Applicant's Exhibit No. 12, that you are talking about now, is it?

Mr. HARRY YOCKEY. Yes.

Mr. BARKELL. Is there any cross-examination of this witness, gentlemen, on Applicant's Exhibit No. 12 for identification? (No response.) If not, is there any objection to Applicant's Exhibit 12?

Mr. DES ROCHES. I have no ojection.

Mr. BARKELL. There being no objection, Applicant's Exhibit 12 is received in evidence.

(Applicant's Exhibit No. 12, Witness McArdle, received in

evidence.)

Mr. Clardy. Just a moment, please. I am a bit confused. Applicant's Exhibit No. 12 is the financial statement, is it not?

Mr. BARKELL. Yes.

Mr. CLARDY. All right.

Mr. HARRY YOCKEY. Do you gentlemen want copies of this statement?

Mr. EGGERS. Off the record.

(Discussion ontside the record.)

Mr. EGGERS. Back on the record.

Mr. BARKELL. If there are no further questions of Mr. Mc-Ardle, he is excused.

The WITNESS. Thank you.

(Witness excused.)

Mr. BARKELL. Proceed, Mr. Yockey.

Mr. HARRY YOCKEY. I take it, if the Board please, that the next matter is the discussion of those two questions in evidence, in connection with Mr. Christie.

Mr. BARKELL. Yes. I think that we had better dispose of those before we proceed with Mr. Christie's cross examination.

Mr. HARRY YOCKEY. I will be very brief, your Honor. I simply desire to read to you portions of three cases.

Mr. Eccers. I suggest that you state the questions again, Mr. Yockey, so that the record will be clear at this time as to just what we are discussing.

Mr. HARPY YOCKEY. Yes.

Mr. Eggers. And so that our recollections will be refreshed.

Mr. HARRY YOCKEY. Yes. May I proceed?

Mr. BARKELL. Yes.

Mr. HARRY YOCKEY. If the Board please, there are two questions involved regarding the testimony of Mr. Christie, covering the two subjects that I attempted to go into after Mr. Christie had testified up to a certain point. I tried then to go into those subjects a little more fully, and objection was made, and the ruling

was deferred in each one of the cases, in order to give me an opportunity to present the legal phase of the situation. The first of the questions was this: After Mr. Christie had testified that there would be a reduction in operating expenses of the Pennsylvania Railroad, I then asked him if he would please enumerate

those items of saving. There was objection interposed to that, on the ground that the testimony was not pertinent.

Now as I said, I only want to read from three cases. There are a number of these cases, but first, here is the case of Missouri Pacific Railroad Company and Missouri Pacific Railroad Corporation in Nebraska, which was a case involving station to station substituted freight service.

Exam. HARRISON. Will you give us the citation of that case

right here, please, Mr. Yockey.

Mr. Harry Yockey. The citation is MC 44609. The volume in the Motor Carrier Reports is 22—volume 22 MCC, page 321; and I read now from page 329, as follows: "Less-than-carload shipments originating on the rail lines of applicant and applicant's rail connections are transported in carload lots to certain break-bulk points, from which distribution to final destinations is made in motor service. Similarly, less-than-carload shipments from points on the considered routes for destinations beyond the break-bulk points are handled in motor service to such break-bulk points and there forwarded in rail service. Existing rail facilities of applicant are utilized in performance of the services by motor vehicle. Local freight trains are relieved of the handling of less-than-carload traffic, thus expediting"—there is your word!—"the movement of carload traffic, Schedules of the local freight trains have been made more dependable and regular, and

switching services for commercial concerns at the consid-500 ered points are performed at earlier hours." Just as Mr.

Christie habtestified here. "Applicant's motor operations enable applicant to maintain later departures from points of origin and earlier arrivals at destinations. The time in transit of the shipments has been materially reduced, in many instances more than 24 hours." Now, then, if your Honors please, here we get to the point in question. "Substantial operating economies have been effected. The coordinated motor and rail service has enabled applicant to eliminate daily the use of 63 freight-train cars"—

Mr. BARKELL. Just a moment right there, now, Mr. Yockey, before you go any further.

Mr. HARRY YOCKEY. Yes.

Mr. BARKELL. To whom or to what are they referring as the applicant in this case?

Mr. HARRY YOCKEY. In this particular instance, your Honor, it was the railroad that was eliminating the use of the freight-train cars.

Mr. BARKELL. Was the railroad the applicant in this case?

Mr. HARRY YOCKEY. Well, now, let me be sure about that: Let me see just a moment. As I remember the case, it was the Missouri Pacific Railroad Company and Missouri Pacific Railroad Company Corporation in Nebraska. There were two of them. But it would not make any difference, however, your Honor, whether it was the railroad or the subsidiary that was doing it.

It is simply a question of whether or not it is a saving to the railroad. There is no difference at all in the proposition.

Mr. Ecoers. Well, now, Mr. Yockey, that is the point that I was a little bit doubtful about, in my own mind; that is, as to whether or not it was proper, the applicant in the case which we have before us here being the Willett Company, to permit any saying to be shown that might accrue to the Pennsylvania Railroad, which for all practical purposes, you might say, at least as far as this particular hearing is concerned, would almost constitute a third party. The Pennsylvania Company is not the applicant in this case, and has no interest in this hearing whatsoever.

Mr. HARRY YOCKEY. Well, your Honor, the Pennsylvania Railroad Company is an intervener in this proceeding; and in these cases, if we take the time to go into them, we will find it has been held that the same thing inures to the subsidiary as to the railroad,

because the service is being expedited.

• Mr. EGGERS I would agree that in a situation like this, for example, where an applicant, a motor carrier, has filed an application to eliminate a certain route, in order to expedite the movement of its shipments by carrying them over a shorter route, that you could go into the question of saving to that particular applicant. I think in a situation of that sort, such evidence should be properly received. But I am not quite certain in my own mind,

at least for the moment, as to whether or not the saving can be shown when it is a saving to another party, not the applicant.

Mr. HARRY YOCKEY. Well, your Honor, I have just been looking at this case here, and it is the case of a subsidiary of the Missouri Pacific Company. In this particular case, it is a subsidiary of the Missouri Pacific Railroad Company.

Mr. BARKELL. Well, Mr. Yockey, does it definitely state in the report from which you are reading that the applicant was able to eliminate so many cars from service!

Mr. HARRY YOCKEY. As I said, your Honor, in this particular

case there were two of them.

Mr. BARKELL. Well, the trucking company would not be able to eliminate cars from railroad service, would it?

Mr. HARRY YOCKEY. Of course not. Mr. BARKELL. That is the question.

Mr. HARRY YOCKEY. But that will be the result.

Mr. BARKELL. I still am not just clear. In this case from which you are now reading, was the railroad company itself the applicant?

Mr. HARRY YOCKEY. One of the applicants.

Mr. DES ROCHES. Mr. Yockey, would you mind stating for the record what the correct title of the case is, which you are now citing.

Mr. HARRY YOCKEY. Missouri Pacific Railroad Company, common carrier application—well, now, let me see just a moment.

Missouri Pacific Railroad Company and Missouri Pacific Railroad Corporation in Nebraska.

Mr. DES ROCHES. Is that the title?

Mr. HARRY YOCKEY. Yes.

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Mr. Clardy. Well, if your Honors please, may I direct one inquiry—

Mr. HARRY YOCKEY. Well, now, will you wait just a minute,

please, Mr. Clardy. Let me see here..

Mr. BARKELL, What is it, Mr. Clardy?

Mr. CLARDY, May I direct one inquiry to Mr. Yockey, which

perhaps will shorten the matter a little.

Mr. HARRY YOCKEY. I am trying to read this case here, and trying to work in a hurry, and I wish you would indulge me for just a moment.

Mr. CLARDY. I am sorry.

Mr. Eggers. Let us be off the record a moment.

(Discussion outside the record.)

Mr. BARKELL. Back on the record.

Mr. Clardy. Now, your Honor, may I suggest something that

may help to shorten up the matter?

Mr. Barkell. We would like to wait just moment further, Mr. Clardy, until Mr. Examiner Harrison gets the voiume that Mr. Yockey has cited.

Mr. CLARDY. Oh, yes.

(Further discussion outside the record.)

Mr. BARKELL. Now back on the record, Mr. Reporter.

504 Mr. Clardy. Now, your Honor, may I suggest something that I think may be of assistance to all of us, in the consideration of these citations?

Mr. BARKELL Yes..

Mr. CLARDY. I would like to have Mr. Yockey, as he is reading these decisions to us, point out the specific language in each decision wherein it is shown that objection was made, as in this case, and the point raised considered and disposed of favorably to his contention. In other words, we are just simply wasting time here in reading these decisions, unless it is shown, first, that in those cases the particular point was raised, and second, that the decision was in his favor, because, unless the point was raised, the mere fact that the evidence was presented without objection, and treated of in the opinion, settles nothing. If the question was not raised there, then the mere fact that the opinion discusses it is merely indicative of the fact that there was some proof put in, maybe a great deal and maybe practically none—we do not know; but it does not decide the legal question that I raised in my objection as to the admissibility of the testimony, unless that question was also raised there and decided. In other words, the dictum set up in the case, or appearing in the case, is not even dictum; it does not rise to that dignity, even, unless the point was raised, and there is some specific language in the decision to indicate that the point was raised.

Mr. EGGERS. Well, now, Mr. Clardy, are you saying there in substance that we should not consider any dictum in any

case, at all? Is that what you are saving?

Mr. Clardy. Not only that, your Honor, but I go further than that, and say that the mere fact that there has been some kind of discussion of evidence of that nature in some other case, does not have anything whatever to do with the legal objection that I have raised here.

Mr. EGGERS. Well, of course I take it that it is within the province of this Joint Board, or any Joint Board, to determine whether or not matter is dictum, or whether or not it will be considered as such.

Mr. CLARDY. Oh, yes.

Mr. Clardy. I am just pointing out that if nobody raised the question, but permitted the evidence to be presented, that settles nothing from a legal standpoint, as to whether the evidence would or would not be admissible. Now if the question was not there presented, and if it is presented here as a legal question, then you have it before you for the first time, and you must make an independent determination. In other words, your Honor, this case, or these cases, cannot be any authority for his position if the point was not raised.

Mr. BARKELL. You may proceed, Mr. Yockev.

506 Mr. HARRY YOCKEY. I think if the Board please, that the position that Mr. Clardy has taken is a very unusual one. I think the law is against him. We contend that where you find evidence discussed in a case, and it is followed by the tribunal considering the case, there is only one presumption that can properly be drawn, and that is that he evidence is admissible, and that it is material; and the presumption is that the tribunal considered it to be admissible or it would not have based its decision upon it. I contend that the mere fact that no objection was raised to the testimony, does not wipe the testimony out; but it goes, as a matter of fact, to the very reverse of that, and indicates that not only was there no question raised, but that it was admissible, anyway, without any difficulty. I contend that is the only inference . that can be drawn. Now continuing with this case. In this particular case there were two railroad companies involved, both of them Missouri Pacific Companies. I want to read from this a little further, because it goes to the very gist of the subject. "Substantial operating economies have been effected. The coordinated motor and rail service has enabled applicant to eliminate daily the use of 63 freight-train cars, thus conserving equipment and eliminating the expense of switching such cars daily to the freight platforms and from the freight platforms to the classification yards and into particular trains. Heavier loading of cars 507 has been accomplished by the consolidation of less-than-carload shipments into one car for each break-bulk point. The

use of motor equipment has enabled applicant to maintain more frequent services between the considered points than were formerly maintained in its rail services. Over certain routes an annual saving of 131,700 train-miles has been effected. Through the elimination of station work, the schedules of local trains have been substantially shortened." Then it gives an illustration of that. I continue reading—and this goes to the same thing that has been raised here: "Various protestants submitted evidence showing their routes of operation paralled or traverse certain of the routes of applicant and that they serve numerous points on such routes. They assert that their present facilities and services are adequate and sufficient, and that they are able, ready, and willing to supplement their present equipment and facilities, if traffic requirements should demand. They state that applicant has not endeavored to secure coordinated rail and motor services with the existing motor carriers, and they take the position that the existing motor carriers in the considered territory should be afforded opportunity to improve their present services and facilities before authorization for new services is granted. Protestants further consider that the continuation of applicant's motor services would

result in unfair and destructive competition practices." And then they add: "Substantially similar contentions were advanced

by certain protestants in Kansas City Southern Case, supra. and our views with respect thereto are amply set forth therein." They stated there that they were not tenable "The proposed motor services are not competitive with applicant's rail services, and there is no showing that they, in any instance, invade the territories of any other rail carriers. They may therefore be classified as 'approved operations' as defined in Pennsylvania Truck Lines, Inc.—Control—Barker Motor Freight"-citing that case. "It is clear that they have resulted in substantial operating economies, and that they have proven to be of material advantage to the public." That is, these operating savings that I have been speaking of—and this is the authority that I cited yesterday—"have proven to be of material advantage to the public. Since such services are strictly confined to rail points now served by applicant, their continuance will not unduly restrain competition." Reading now from page 332: "The record warrants the conclusion that the services to be authorized are those which are supplemental of, or auxiliary to, and coordinated with that of the two railroad companies. The certificates herein granted covering such proposed operations will be limited accordingly." That is, as to being supplemental of, auxiliary to, and coordinated with the rail service, which is our situation here. Now, then, the things that are discussed here, that are set forth in this decision that I have just read, are the specific things that we want to inquire about here. They cover savings in car-

509 miles, the use of boxcars, reduction in overtime of local freight train crews, reduction in yard switching expense—I will give you all of them; reduction in engine hours, reduction in stowing freight in cars; reduction in second handling of freight; and certain intangible savings.

- Mr. BARKELL. Now, Mr. Yockey, in what respect are any of those purported savings going to affect the applicant in this case?

Mr. HARRY YOCKEY. It affects the railroad, and that is their reason for putting in the service. If there were not any savings, and if it did not expedite the movement of the traffic it would not be permitted. In other words, without that, certificates would not have been granted in those instances where certificates have been granted.

Mr. Anderson. If the Board please, may I interrupt to ask a question of Mr. Yockey?

Mr. BARKELL, Yes.

Mr. Anderson. Mr. Yockey, the case that you have been reading of rom here is not a case involving the Willett Company, is it!

Mr. CLARDY, No.

Mr. HARRY YOCKEY. How is that again?

Mr. Anderson. The case that you have just been citing to the Board is not a case involving the Willett Company, is it?

Mr. HARRY YOCKEY. No.

Mr. Anderson. Who was the applicant in that case?

Mr. Harry Yockey. This is a Missouri Pacific Railroad case.

Mr. Anderson. The railroad was the applicant?

. Mr. HARRY YOCKEY, Yes.

Mr. Anderson. Well, now, right there, it seems to me, your Honors, is the point. If the railroad company was the applicant here, or at least if the Willett Company was working with the railroad, as in the other case, under a prior and subsequent-rail-movement arrangement, then I can see how it might be proper; but here is an independent proposition by the Willett Company, competing with the other carriers in every way, as was developed in the evidence yesterday; and for that reason I do not think Mr.

Yockey's citation is in point at all.

Mr. Harry Yockey. If the Board please, let me read you briefly from another case, Texas & Pacific Motor Transport Company, No. MC 50544 Sub. No. 10, reported in 30 MCC 465. I am reading from page 467. "The proposed extension is not a new operation, but merely an improvement of a service already performed by applicant in its present operations. The bulk of the traffic tobenefit from the improvement is already being handled by applicant." That is, they are already in operation. "If the improved service should attract additional traffic to applicant, that fact should not deprive the public of the substantial advantage-that would come from more expedited service. The pro-

posed changes would not deprive any community of service now being rendered and would not result in any reduction of employees. The changes would have the desirable result

of more economical operations by applicant."

Mr. Anderson. What is that case?

Mr. HARRY YOCKEY. Texas & Pacific Motor Transport Company.

Mr. CLARDY. What is the citation?

Mr. BARKELL. Volume and page.

Exam. Harrison. 30 MCC 465?

Mr. HARRY YOCKEY. Texas & Pacific Motor Transport Company. Extension of Operations, 30 MCC 465.

Mr. Anderson. 465?

Mr. HARRY YOCKEY. Yes.

Mr. Anderson. Will you at this time give us the citation of the other cases, if any, that you are going to rely on?

Mr. Harry Yockey. Here is something that I want to read on the other proposition, from Atlantic Coast Line Railroad Company, Extension of Operations, 30 MCC page 491. "Protestants contend that the Commission erred in referring the application to a Joint Board"—well, just a moment. That does not apply. "We are also of the opinion that public convenience and necessity require the proposed service. What applicant is seeking is not to enter a new field of service, but to substitute a more economical and flexible service." That is the contention that is made in this case; it is not a new service.

"Applicant has been and is transporting the traffic in question by rail, and it is under obligation to continue to do

The proposed coordinated rail-truck service will result in a saving and a more efficient handling of merchandise traffic as well as in an improvement in the handling of carload traffic. Protestants assert that Thurston Motor Lines serve all of the points involved, and it may be, as contended, that existing motorcarrier service is adequate, but one competitive carrier or class of carriers has no vested right in the continuation by another of an inefficient method of operation. Rather, we believe it to be the policy of Congress and the proper function of this Commission to foster any form of progress in transportation which will serve the public interest." 'Now, if the Board and the Examiner please, I believe that, on the basis of these decisions from which I have read you, we are entitled to introduce this evidence; if there is any doubt in your minds, I think, rather than requiring us to make an offer of proof, and delaying the matter, we should be allowed to introduce the evidence, and protestants may make their motion to strike. We have gotten it in, in every other case that we have been in; it is in every one of these other cases that have been before the Commission; and in order to make this record clear, I think that we should be permitted to put the evidence in, in this case also; and then if counsel for protestants want to move to strike it out, they may make their motion of

record, and their rights can be amply saved. Otherwise, if you rule it out, it is going to delay the matter, from our standpoint, and an offer of proof will not get it into the record, but will only save the error. Nobody will be harmed if we are permitted to put the evidence in, over the objection. I think it will best serve everybody, if it be done that way. I have no objection, of course, to raising and discussing the matter on brief; but we feel very definitely, of course, that this is the law, and as I say, we have done it in every other one of these

Mr. CLARDY. May I point out again, your Honor, that it has now been fully demonstrated that all of the citations go to a

totally different point than we have involved here; because each of them has to do with a case in which, admittedly, the railroad was the moving party seeking extension authority. Further, let me point out again that not one of these citations indicates that the question of the admissibility of the evidence was ever raised, much less passed on. Now I am not in the habit of citing a case, either on brief or elsewhere, as authority for any contention of mine that the courts have held a certain way on a certain legal proposition, unless the case, by its very language, indicates that the particular question was raised. The courts, as your Honors well know, have stated many times, "Certain points were not raised below, and we therefore do not pass upon them."

Mr. EGGERS. Mr. Clardy, let me interrupt you right there.

Mr. CLARDY. Yes.

514 Mr. Eccess. You would not suppose, would you, that the Commission—these are all decisions of the Commission, as I understand it, that you have been citing to us; is that correct?

Mr. HARRY YOCKEY. Oh, yes.

Mr. Ecoers. You would not suppose that the Commission would spend that much time discussing a question that had not been raised, would you, Mr. Clardy?

Mr. CLARDY. Certainly.

Mr. Eggers. Do you know that in those cases the question was not raised directly? You are just supposing, are you not?

Mr. CLARDY. There is no language in the decisions to indicate

that the question was raised.

Mr. Eggers. Well, now, I want to clearly understand your con-

tention. You are just assuming something, are you not?

Mr. Clardy. No, no, your Honor. I am going much further than that. I say that when a question of that importance is raised, it certainly will be discussed, and in the opinion it will be stated in plain language, "Protestants objected to the receipt of such evidence," and then they will proceed to discuss the fact that they think it competent. Now all that these citations which Mr. Yockey has advanced, prove is that the Commission either conjured up its own ideas as to those facts, or found something in the record upon which to base, not a statement of fact, but the statement of a number of conclusions as to what they

thought the evidence might show. They do not, however, indicate by a single word that protestants made any ob-

jection to the receipt of that kind of testimony, or at any time objected to the consideration of it; and as proof of that fact, I point out that when he went beyond the question that is here involved, he read from one of those decisions, language in which

the Commission said in substance; "Protestants contend that they can perform the service," and I say that indicates that the Commission has committed what I stated at the outset was an error, in saying that the thing should be done a certain way. Now aside from the mere fact that the decision from which he read indicates that a certain point was raised by protestants, and decided against them, it indicates that the other question about the admissibility of proof on the subject of financial savings, was not raised, because the language with respect to the question that was raised, did not even touch that.

of service of the other carriers, and their desire to continue to serve, and to get that business. Now, it is never customary for any lawyer whom I know anything about, to ever cite a case as supporting his position, unless the point was raised, not by indirection, but squarely; and therefore, I point out that these citations are not authoritative. Now, as to the merits—

Mr. Eggers. Yes; let us spend a little time on that; that is, no more time than you have been given, but let us spend some time on that.

Mr. CLARDY. All right. I just want to say, though, that the cases cited by counsel mean less than nothing, because they do not indicate any decision. Now, then, on the merits of the thing—

Mr. BARKELL. Just a moment, please.

Mr. Eggers. Off the record,

(Discussion outside the record.)

Mr. BARKELL Back on the record.

Mr. HARRY YOCKEY. Those citations are: 22MCC321; 30MCC491; and 30MCC465.

Mr. Clardy. Now, your Honors, if I may say just a word on the merits.

Mr. BARKELL. Very well.

Mr. CLARDY. Just briefly—and more briefly, I hope, 517 than Mr. Yockey did.

Exam. Harrison. Three minutes, Mr. Clardy.

Mr. CLARDY. Well, now, your Honor, you gave Mr. Yockey considerably more time than that.

Exam. Harrison. But you have been talking about five minutes now.

Mr. CLARDY. I have not been talking anywhere nearly as long as he did.

Mr. Eggers. Just very briefly, Mr. Clardy, what was it you started to say?

Mr. Clardy. Well, let me say first, I do not understand that I am going to be prevented from presenting my point.

Exam. HARRISON. Mr. Clardy, if my recollection serves me correctly, you covered all this in your original argument.

Mr. CLARDY. I beg your pardon, your Honor. I have not

argued at all as to the merits, yet.

Exam. HARRISON. I think, however, for the purposes of this

record, you have been talking long enough.

Mr. CLARDY. Counsel discussed the point that was up, and a dozen other points also, aside from the one that was really up. I am not going to discuss those points here; I intend to discuss them on brief, where they ought to be discussed. But may V just point this out, on the merits of the thing—

Mr. BARKELL. Go ahead.

· Mr. CLARDY. Here we have a case in which the contention is made that these companies are separate companies; that the truck company is not the same as the railroad company, and the railroad company is not the same as the truck company. Now, they come in and want to show an alleged saving in time, that they claim will accrue to the railroad; not to the shipping public, and not to anyone other than the carrier known as the railroad. My point is that since public convenience and necessity is the only issue involved, in presenting this kind of testimony, it is not competent to prove it by claiming that the carrier involved, whether it be a railroad company, or a common motor carrier, can prove public convenience and necessity by showing a saving to itself. If Mr. Yockey were attempting here to show that the public will get reduced rates, even that would not be competent, and it has been so held-that the mere fact that you. are going to bring about a saving in rates does not prove publicconvenience and necessity. Therefore, for that additional reason,. it is not competent to show that at all, because without having an opportunity now to dig up the decisions, I am sure that the Examiner, at least, will surely recall that the Commission has decided, and the courts have held, that proof that the rates offered by an applicant will be lower than those in effect, is not receiv-

able as proof of public convenience and necessity—as by indirection here, they want to attempt to show something

that is even less than that, because they are not even going to claim that the public will benefit by getting lower rates here. All that they are claiming is that the railroad will make more money by saving money that it would otherwise have spent. I contend, therefore, that on the merits of the thing, this evidence cannot prove anything, and is therefore neither material nor competent.

Mr. HARRY YOCKEY. Now, if the Joint Board please, may I just have one final word, very briefly, in answer to what Mr. Clardy.

has said?

Mr. BARKELL. Yes.

Mr. Harri Yockey. We do not want anything in here for a moment, that we are not entitled to. I am saying to you very frankly, we have the authority for this, although we do not have all of it readily available just at this time. It is apparent that we are not going to be able to finish this case today. I do not want to ask you to do anything that I cannot very definitely back up, and I cannot do that, in the limited time that we have at our disposal right now. I thought I had those other cases with me, but I find that I have not. Now, then, if this case is going to be continued anyway, until tomorrow, or until some other day, whatever date it is continued to for further learning, why, we would like

to let these two specific subjects go until that time, and I will produce the law at that time, or else it will be my fault.

Mr. CLARDY. I would like to join in that request, your Honors, because I would like to produce some decisions on that last point particularly myself.

Mr. HARRY YOCKEY. That is fair enough. Then there will not

be any delay or waste of time.

Mr. CLARDY. As a matter of fact, I would like to suggest that we both work up a brief between now and the time we resume. Perhaps we can save considerable argument by submitting a brief to you gentlemen.

Mr. BARKELL. Off the record.

(Discussion outside the record.)

Mr. BARKELL. Back on the record, Mr. Reporter. It is the opinion of the Joint Board that this testimony will be admitted, subject to the objections which have been interposed by opposing counsel. Let us continue with the case.

Mr. HARRY YOCKEY. In order to save further time in making objections, may it be understood, if the Board please, that the ob-

jection of protestants goes to the entire subject matter.

Mr. CLARDY. Yes; that is all right, but neverthless I will want to raise specific objection to each question as we go along.

Mr. HARRY YOCKEY. All right. I just thought that we might possibly save some further time.

521 Mr. BARKELL. That is all right.

Mr. Clardy. Because I want to be very sure that I am protected on the point, as to each question.

Mr. BARKELL. Is your witness here, Mr. Yockey?

Mr. HARRY YOCKEY. Yes, sir.

Mr. BARKELL. Let us continue, then.

Mr. HARRY YOCKEY. Mr. Christie.

E. M. CHRISTIE resumed:

Mr. CLARDY, If your Honors please, I think in due fairness to the Joint Board, I should say that the crux of my objection, as I

voiced it at the outset to the past decisions of the Commission, was based on the very fact that they have received and used as a basis for their decisions, this very kind of testimony, and I say that with regard to each of the orders that the Commission has made thus far, and that I intend to challenge in this proceeding.

Mr. BARKELL. All right. Then you will be starting all over

again: Proceed with the witness, Mr. Yockey.

Direct examination (cont'd) by Mr. HARRY YOCKEY:

Q. Mr. Christie, you are the same Mr. E. M. Christie who has heretofore been sworn and testified in this matter on behalf of the applicant, are you?

A. Yes, sir.

Q. Now, the question was asked you as to whether or not in the service that you have described, there was any saving of time involved in the truck-rail movement, as against, or under the all-rail movement; to which you answered "Yes."

A. Yes.

Q. Then you were asked as to whether or not there would be any reduction in operating expenses to The Pennsylvania Railroad Company by reason of the rail-truck operation, and to that question you also answered "Yes."

A. That is correct.

Q. Now, then, the next question is

Mr. CLARDY. Well, now-

By Mr. HARRY YOCKEY:

Q. Will you please enumerate-Mr. CLARDY. I do not think he answered that question, although perhaps he did.

Mr. HARRY YOCKEY. Yes.

The WITNESS. Yes: I did.

By Mr. HARRY YOCKEY:

Q. In any event, Mr. Christie, if you did not answer that question before, what is your answer to the question now?

A. My answer is; yes.

Mr. CLARDY. Well, then; just to protect myself, I move to strike it out. /I did not think the question had been answered.

The WITNESS. Yes.

Mr. HARRY YOCKEY. It was.

Mr. BARKELL. Your motion is to strike the answer?

523 Mr. CLARDY. Yes.

Mr. BARKELL. Denied.

Mr. CLARDY. And an exception.

Mr. BARKELL. It is understood that an exception automatically goes with every adverse ruling.

Mr. CLARDY. Thank you.

By Mr. HARRY YOCKEY:

Q. Now, Mr. Christie, will you please enumerate what the items of saving are to The Pennsylvania Railroad.

Mr. CLARDY. To which I object, on the grounds already stated.

Mr. BARKELL. Overruled.

By Mr. HARRY YOCKEY:

Q. Proceed.

A. There will be a saving in car-miles; there will be a saving in overtime; there will be a saving in locomotive expense; there will be a saving in the stowing of freight; there will be a saving in yard switching; and there will be a saving in second handling of freight.

Q: How about boxcars?

A. There will be a saving in boxcars used.

Q. How about engine expense?

A. There will be a saving in engine expe'se. I thought I had mentioned that.

Q. All right. Now, then, take those items up one by one, and explain first wherein the reduction of expense occurs in the 701 case of the car miles.

Mr. CLARDY. To which I object.

Mr. HARRY YOCKEY. To save time, Mr. Clardy, why not let your

objection go to all of this line of examination?

Mr. CLARDY. Well, that is all right. Where I do not want to voice any specific reason, I shall be glad to just have the objection go as noted; but I want the privilege of raising any specific additional reasons that I think necessary, as we go along.

· Mr. HARRY YOCKEY. That is all right.

Mr. BARKELL Objection overruled.

A. By handling this freight in trucks, we will eliminate over 61,000 car-miles per month on the Pennsylvania Railroad.

By Mr. HARRY YOCKEY:

Q. Now, then, you spoke of a saving in the use of boxcars.

A. Yes.

Q. Will you please explain wherein there will be such a reduction in expense, which occurs by the elimination of the use of boxcars?

A. By handling the freight in trucks, we will eliminate the use of approximately 860 boxcar-days per month.

Q. And what you are testifying to here, is covering these seven new routes; is that correct?

A. Yes.

Q. If these truck routes are established, there will be that saving to the railroad, will there?

A. Yes, sir; that is correct. This saving is all in connec-

tion with the seven new routes.

Q. All right. (Now, will you explain what the saving to the

railroad will be in the overtime of local freight trains?

A. We will eliminate the overtime of the local freight train that is required in the unloading of less than carload freight, which will make a saving in the amount of overtime paid.

.Q. On the seven new routes?

A. Yes.

Q. That is where it will be?

A. Yes, sir.

Q. Now, then, next on the question of saving in yard-switching expense, will you explain what that is, or will be, on these seven new routes?

A. For each boxcar we eliminate, we will eliminate the necessity for switching that car in the yards, and thus we will eliminate the switching expense.

Q. So that there will be a saving in that regard over these seven

new routes?

A. Yes, sir.

Q. All right. Now, wherein is the reduction in engine hours to the railroad? Will you please explain that?

A. For each overtime hour that the crew makes, there is an expense on the locomotive, for fuel, water, and lubricants:

526 and this expense will be eliminated.

Q. And that will be a saving over these seven new routes

A. Yes, sir.

Q. Now, with respect to the stowing expense: will you please

explain wherein the saving is effected there?

A. By eliminating the loading of this freight into boxcars, we likewise eliminate the necessity for stowing the freight in the cars for safe riding, and that expense will be eliminated.

Q. Now, then, the next item is in connection with second han-

dling of freight. Will you please explain that?

A: Well, in loading way-freight way-cars, we endeavor to load the freight in station order, and in doing that we put practically all of the freight, or the majority of it at any rate, on the platform, and segregate the freight in that manner until all of it is ready to load into the car, and then we load it in, in station order; 527

and by doing it in that manner it causes a second handling of the

freight.

Mr. HARRY YOCKEY. That is all of the testimony, I think, on that particular subject. Now, then, next I would like to go to the other question, of the cause, or the reason or reasons as to why they desire a subsidiary truck line, rather than a nonsubsidiary truck line. Now, if the Board please, the witness did testify that

they do prefer a subsidiary truck line to a nonsubsidiary truck line, and I then asked him why, and there was an

objection raised to that, and that is the question that is pending. I have no authority for it, except the fact that we have done it in every one of the cases that we have been in. There never has been any objection to it, and the Commission has always admitted it, and I think that the same rule should apply here, or that is, I mean, the same procedure should apply here, and that it should be admitted over the objection.

Mr. BARKELL. It is the opinion of the Joint Board that that issue is not involved in this case, and therefore the objection is

sustained.

Mr. HARRY YOCKEY. Well, now, if your Honor please, would you be good enough to hold your ruling, just hold your ruling in abeyance, to give me an opportunity to make an offer of proof.

Mr. BARKELL. I understood you to say that you were just making your offer of proof. I though you said that you do not have any authority.

-Mr. HARRY YOCKEY. No; your Honor, I did not say that, be-

cause I want to get the evidence in.

Mr. CLARDY. What he said was-

Mr. Econ. Just a moment.

Mr. CLARDY. — that he did not have any authority to support his contention.

Mr. HARRY YOCKEY. I stated, your Honor, that I do not have any decisions on the proposition; nothing except the authority of the other cases, where we have been permitted to introduce it.

Mr. CLARDY. Counsel is merely citing himself as the authority.

Mr. HARRY YOCKEY. Yes.

Mr. BARKELL. Let the record show, Mr. Reporter, that the ruling of the Board is withheld, to give Mr. Yockey an opportunity to make his offer of proof.

Mr. HARRY YOCKEY. Now, in order to get the record straight, I had better ask him regarding the reasons for the desire on the part of The Pennsylvania Railroad Company to use a nonsubsidiary truck line, rather than a subsidiary, as he has previously testified too.

By Mr. HARRY YOCKEY:

Q. What are those reasons?.

Mr. Anderson. Just a moment, please. To which we object your Honors.

Mr. HARRY YOCKEY. All right.

Mr. Anderson. For the reasons that have been heretofore stated on the record.

Mr. HARRY YOCKEY. To get the record straight, if the Board please, we offer to prove by this witness that the reasons why The Pennsylvania Railroad Company desires to employ The Willett Company of Indiana, Inc., a subsidiary, to perform this service over the seven new routes involved here, are as follows: First,

The Pennsylvania Railroad has already employed The Willett Company in other service of this type, over the

25 routes heretofore referred to, and The Willett Company is satisfactorily performing this same service, over those 25 routes, in operations in Indiana, Illinois, and Kentucky. Second, The Pennsylvania Railroad perfers to have this service over the entire 32 routes, performed by one truck line subsidiary, rather than by two or more truck lines. Third, we prefer for many reasons, to employ our subsidiary, The Willett Company of Indiana, toperform this service for us over the 32 routes. Fourth, we prefer The Willett Company of Indiana for the reason that The Willett Company of Indiana, Inc., as a subsidiary of the railroad company, has a complete understanding of the entire problem involved, from the standpoint of coordinating this railtruck service. Fifth, The Pennsylvania Railroad Company desires a unified service, by using one company over all of the routes, and using The Willett Company of Indiana, Inc., for that company. Sixth, The Pennsylvania Railroad Company desires The Willett Company of Indiana, Inc., to perform this service, because no one independent trucker, as far as it knows, can serve all of the points on all of the 32 routes, in all of the states where the service is used and needed under the present application. Seventh, we desire The Willett Company of Indiana to perform this service because The Willett Company's drivers are specially trained and qualified for this type of service. Eighth, it is the

desire of The Pennsylvania Railroad Company to have The Willett Company of Indiana, Inc., perform this serv-

ice, because of the fact, as we will show, that it is necessary for the drivers of trucks at times to enter and leave the freight stations of The Pennsylvania Railroad at hours when the freight stations are closed; and The Pennsylvania Railroad Company believes that The Willett Company is better able to serve the railroad, in performing this service, by its employees, the em-

ployees of The Willett Company, because the railroad company is willing to turn over to the drivers of The Willett Company the keys to the various freight stations. Ninth, because The Pennsylvania Railroad Company, in its present operations with The Willett Company, has had no thefts or losses, by reason of the employees of The Willett Company of Indiana. Tenth, because The Willett Company of Indiana, Inc., is financially responsible, and able to take care of all of the various 32 routes. Eleventh, because there is a certainty of The Willett Company of Indiana, Inc., maintaining its equipment in first-class condition; there is a certainty of the payment of claims by The Willett Company, a subsidiary; there is a certainty that its own subsidiary will make the route schedules to meet the requirements of The Pennsylvania Railroad, and that it will continue to do so, no matter what the change may be in the freight-train service of The Pennsylvania Railroad; and because the railroad knows that its subsidiary will make such changes as may be required, to fit in with the service of The Pennsylvania Railroad.

Twelfth, because The Willett Company is hauling for The Pennsylvania Railroad Company only, and there is no interference in the service by reason of The Willett Company being compelled to meet the demands or wishes of independent patrons. Thirteenth, because The Willett Company of Indiana, Inc., is not a competitor of the railroad in any sense; and The Pennsylvania Railroads is unwilling to have its freight handled by so-called competitors, or truck lines that consider. themselves as competitors, that operate along the line of the railroad. The Pennsylvania Railroad believes that these independent operators will not be as well qualified as the drivers of The Willett Company to learn and retain the names and addresses of the consignors and consignees of the railroad, and become familiar with the type, kind, and volume of their shipments. Fourteenth, the railroad company desires of its subsidiary company the exclusive use of the vehicles involved, and The Willett Company gives this type of service. The railroad does not desire its freight to be combined or mixed with that of other shippers. Fifteenth, and lastly, because the railroad company feels that it can depend on this particular subsidiary to perform the service properly; that The Willett Company will not quit the service of The Pennsylvania Railroad Company overnight; but that at all times the railroad company will be in a position to have a complete service, the complete flow of service which it desires in this rail-truck operation. the Joint Board please, is my offer of proof.

Mr. CLARDY: To which we renew each and all of our objections. As to our additional reasons, in support of our

objections, we will treat of them in the brief. There are a number of incongruous statements in what Mr. Yockey has said, that we want to point out at the proper time.

Mr. BARKELL. The objection is sustained ..

Mr. HARRY YOCKEY. Well, now then, if the Board please, with those two subjects out of the way, I have only one other line of inquiry that I would like to address to Mr. Christie before I turn him over for cross-examination.

Mr. BARKELL. Pardon me, Mr. Yockey. Did I understand you

to say that you are through with the witness on direct?

Mr. CLARDY. No. He says he has some further direct.

Mr. BARKELL. Oh.

Mr. HARRY YOCKEY. Yes.

Mr. BARKELL. Go ahead.

By Mr. HARRY YOCKEY:

Q. Mr. Christie, I direct your attention now to applicant's exhibit No. 4. I believe you testified that you had something to do with the making of these schedules.

A. I made them.

Q. You made them yourself?

A. Yes, sir.

Q. Now, is there any connection between the schedules that are set up in applicant's exhibit No. 4 here, and the arrival or departure times of the Pennsylvania Railroad trains?

A. Yes, sir; these schedules are based principally on the

arrival and departure times of the trains.

Mr. Clardy. Just a moment, please. May I hear that answer again, Mr. Reporter?

(Answer read.)

By Mr. HARRY-YOCKEY:

Q. Now, Mr. Christie, was there any attempt to make these

schedules up on any other basis than that?

A: The schedules were based—or made up on the basis of connecting with each other at certain times, and at other times to connect with the trains; so in preparing these schedules we used the connection of the trucks or the trains wherever we desired that they be connected.

Q. Well, now, let me ask you this question, Mr. Christie: is this an inflexible schedule which you intend to operate on at all times,

and be bound by under any and all circumstances?

A. That is the schedule that we propose at this time to put into use, if this application is granted; but at any time we feel we can better serve the patrons of the railroad by changing the schedule, we will change it.

Q. So that there is nothing permanent about this schedule, then?

A. No.

Q. It is only a tentative one that you have arranged at this time; is that correct?

A. Correct.

Q. Well, now then, it is the desire and the requirement of the railroad that these trucks be operated on these schedules to serve the needs of the railroad, is it?

A. Yes, sir; it is our desire that these schedules be put into effect by The Willett Company, because they will serve the needs

of the Pennsylvania Railroad.

Q. Now, then, if these particular schedules are put into effect, and these trucks are operated on these particular schedules in conjunction with the present railroad schedules, will the service that you have spoken of and described in your testimony be expedited on each and every one of these routes?

A. Yes, sir.

- Q. And will there be an expedition of 24 hours in the service on every one of these seven routes—that is, by the use of these schedules?
 - A. There will be an expedition of 24 hours or more; yes, sir.

Q. 24 hours or more.

A. Yes.

Mr. HARRY YOCKEY. That is all I have with this witness on direct, your Honors.

Mr. BARKELL. Cross-examine.

Cross-examination by Mr. Anderson:

Q. Mr. Christie, I believe you have testified that you are a director of The Willett Company. Is that correct?

535 A. No.

Q. You are not officially connected, then, with The Willett Company, are you?

A. I am not connected in any way with The Willett Company

of Indiana; no, sir.

Q: You are merely supervising agent of The Pennsylvania. Railroad?

A. Yes.

Q. On special duty.

A. Yes, sir.

Q. Your special duty, however has been an assignment to the affairs of The Willett Company for several years, has it not!

A. It has been an assignment not only to The Willett Company, but to other trucking interests in an effort to utilize motortruck operation to better serve the patrons of The Pennsylvania Railroad.

Q. And you also render service to the railroad in connection with The Pennsylvania Truck Lines, do you not?

A. Yes.

Mr. Anderson. Now, Mr. Yockey, I had intended to ask the witness about what is shown on applicant's exhibit No 3 here, but I can avoid that inasmuch as you have agreed to supply another exhibit.

Mr. HARRY YOCKEY. That is true, but I have not had time, up to.

this point, to do that.

536 Mr. Anderson. That is all right. I understand you can give it to us later, so that we will have it when we resume the hearing.

Mr. HARRY YOCKEY. I will do that.

Mr. Anderson. Therefore, I will pass that at this time.

Mr. Mr. Anderson:

Q. Now, Mr. Christie, you have testified here about a so-called station-to-station truck service. Just what did you mean by that?

A. I meant that they haul freight—that is, that The Willett Company of Indiana hauls freight for The Pennsylvania Railroad from station to station.

Q. Well, now, when you say from station to station, you mean, from city to city, do you not?

A. Yes, sir; from the Pennsylvania Railroad station in one city,

to the Pennsylvania Railroad station in another city.

Q. Now, you do not mean to say to this Joint Board and Examiner, do you, Mr. Christie, that if this authority is granted, as prayed for in this application, without the "prior and subsequent rail movement" clause in it. The Willett Company of Indiana will at all times, and under all circumstances, haul all of the freight that it hauls from a Pennsylvania Railroad station?

A. No, sir.

Q. No.

A. I mean to say this; that The Willett Company on this proposed route—or on these proposed routes, will haul this freight from station to station. Now, up to the present time there has been nothing considered by The Pennsylvania Railroad, or any consultation with The Willett Company, as to any pickup and delivery service that might be performed at any point along the route: nor do we have anything in mind, with respect to pickup and delivery service along the route by the overthe-road-trucks. I am talking now about the over-the-road trucks, you understand. Now, it may be, however, at some future per-

riod, that there will be a little town along there somewhere as to which we will say to The Willett Company, "Now, we want you to deliver freight and pick up freight in that little town"; but never have we, along any of our routes, asked The Willett Company to pick up or deliver freight in a city or town of any consequence, with its road haul trucks, because if we do that, we are breaking down the schedules, and we might not be able to give the service that the operation is intended to give.

Q. Yes; I appreciate that, but you were present here and heard the testimony along that line, that we endeavored to get from Mr.

McArdle yesterday, did you not?

A. I heard most of it, I think.

Q. Yes. Now, while I liked your speech, it still does not answer my question, so I am still going to persist in trying to get an answer to my question.

A. Well, I am sorry-

Q. Now, listen, Mr. Christie, I am not interested in your confining your answer to over-the-road trucks, and that is out of any question that I am going to ask you about that.

A. All right.

Q. You understand that, do you?

A. Yes.

Q. I am not talking at all about the over-the-road trucks. I am not interested now in anything except the very question itself that I ask you; and I am going to ask that the question be read by the Reporter, and after it has been read, I am going to ask you to answer the question.

Mr. HARRY YOCKEY. Oh, now, if the Board please, I submit that counsel is going beyond anything that is involved here. What he is talking about now is beyond the scope of anything that we are

asking for in this application.

Mr. Anderson. Not at all. I am talking about the movement of freight by The Willett Company. I do not care whether it is in over-the-road trucks or some other kind.

Mr. HARRY YOCKEY. Furthermore, I submit that the witness has

fully answered the question.

Mr. BARKELL. Read the question, please, Mr. Reporter.

(Question read.)

Mr. HARRY YOCKEY. Now, I submit, your Honor, that the witness answered the question.

Mr. Barkett. Let us hear the answer again, please, Mr.

Reporter.

Mr. Anderson. That question can be answered yes or no.

Mr. HARRY YOCKEY. Well, bearing in mind-

Mr. Anderson. Pardon me. He can explain his answer if he wants to do so, but I first want a yes or no answer.

Mr. HARRY YOCKEY. Bearing in mind that it goes to what is

sought in this application-

Mr. Anderson. I am not talking about what they have done over the 25 routes that have been referred to here. I am not talking about that.

Mr. HARRY YOCKEY. Well, to save time, go ahead.

The WITNESS. I think, if you will have my answer read, you.. will see that the answer I made to the question was "No."

By Mr. CLARDY:

Q. Is your answer "No," Witness !..

A. Read it.

By Mr. ANDERSON:

Q Is your answer to my question, then, "No," Mr. Witness?

A. With the explanation,

Q. No. Pardon me, now. First, I want a yes or no answer to my question.

A: I gave-

Q. And then, if you want to explain your answer further, you have the privilege of doing so.

A. I have given you a "No" answer.

Q. What is your answer, now, to the question?

540 . A. Read the answer.

Mr. ANDERSON. Read the question.

Mr. BARKELL. Now, just a moment, gentlemen. Let us proceed

in an orderly manner.

It ought not to be necessary for us to have these questions read and reread a half a dozen times, or the answers either. A good deal of the time that is utterly unnecessary. We spent a very great amount of time vesterday doing that very thing, and we hoped that we would be able to avoid getting into that same situation today. We will strike the present answer from the record, and you may read the question once more, Mr. Reporter, and the witness may answer the question.

The WITNESS. Well, to save time, I will answer it by saying

Mr. Harry Yockey. Just a moment, Mr. Christie. Let us abide by the ruling of the Chairman. Let the question be read again.

Question read.)

A. No, sir. There will be certain small stations—that is there will probably be certain small stations along this route at which we will ask the Willett Company to perform pick-up and delivery service for us; but the over-the-road trucks that are used in this

station-to-station service, will not perform any pick-up and delivery service at any of the larger points.

Mr. BARKELL. Proceed, Mr. Anderson.

By Mr. ANDERSON:

Q. Do you know, Mr. Christie, of any common carrier, common motor carrier that operates over-the-road trucks of the kind that they operate, that The Willett Company operates, at the

542 present time, and uses them in city pick-up and delivery service?

A. I have heard of such instances.

Q. You have heard of them?

A. Many times.

Q. But you are familiar enough with the trucking business, from your close contact with The Willett Company and The Pennsylvania Truck Lines, to know that, for instance, the Darling Trucking Company, one of the protestants here, operating over part of this route that you are talking about, uses certain trucks for over the road service, are you not?

A. I don't know.

Q. And then it has other trucks, smaller trucks, for city pickup

and delivery service.

A. I don't know that; no, sir; but I understand that in many instances the over-the-road trucks that are used by common or contract carrier truck lines, also deliver large shipments; they deliver large shipments with those over-the-road trucks.

Q. Have you been in close contact with any of the larger and better-manned common carriers within the last three years, say?

A. Well, this, of course, is not of my own personal knowledge, you see.

Q. Oh.

A. It is simply hearsay, where the trucks come in, and they use those particular trucks to deliver freight.

Q. Well, now, The Willett Company of Indiana has city

543 pickup and delivery trucks, has it not?

A. Yes.

Q. How many?

A. I don't know.

Q. But you know they have them!

A. Yes, sir.

Q. And they use them?

A. Yes

Q. But they do not use them for over-the-road service, do they?

A. No.

Q. All right. Now, The Pennsylvania Railroad maintains solicitors, to solicit basiness, does it not?

A. Yes.

Q. It always has?

A. Yes.

Q. And always will, I assume.

A. I would assume so.

Q. The Pennsylvania Railroad maintains a solicitor at Fort Wayne, I assume, does it not?

A. Yes.

Q. And that solicitor will solicit business, and does solicit business at Fort Wayne from all of the big shippers, does he not?

A. Yes.

Q. There is no class or kind of shipper that is excluded from his solicitation, as a matter of fact, is there?

A: No; he solicits from all shippers.

Q. Yes.

A. Small and large.

Q. The Pennsylvania Railroad will accept freight from all who offer it, does it not?

A. Oh, yes.

Q. In other words, you are strictly a common carrier.

A. Yes.

Q. Now if this service should be authorized, if this authority should be granted to The Willett Company, that solicitor, John Jones, in Fort Wayne, soliciting freight for and being paid by The Pennsylvania Railroad Company, will be soliciting freight at Fort Wayne for movement by The Willett Company, wholly on trucks of The Willett Company, in interstate commerce, consigned to points along the route, will he not?

A. I would say, the answer to that question is "No," because you said in your question that that solicitor would be soliciting freight at Fort Wayne for movement on the trucks of The Willett

Company. .

Q. Yes.

A. He will be soliciting freight for movement on The Pennsylvania Railroad, which we will turn over, in a great many instances, to Willett trucks.

Mr. Anderson. Well, now, again, if the Board please, I insist that that is an evasion of a direct answer to my question.

Exam. Harrison. I think the witness has answered the ques-

Mr. ANDERSON, No.

Mr. HARRY YOCKEY I think so too. You are trying to get him to say that he is soliciting for The Willett Company.

Mr. Anderson, No.

Mr. HARRY YOCKEY. And he is answering "No" to that question. Mr. Anderson. No, I did not ask him about soliciting for The Willett Company at all.

Exam. HARRISON. What was the question again, then?

By Mr. ANDERSON:

Q. The question is this: That man, that solicitor we have been talking about, will solicit freight for The Pennsylvania Railroad. Company, will he not?

A. Yes.

Q. And that freight will move on a bill of lading of The Pennsylvania Railroad, will it not?

A: Yes.

Q. But not one pound of some of it, at least, consigned to certain points there, as you have explained, will ever move, in a Pennsylvania Railroad freight car, will it?

A. That is correct.

Q. In a movement from Kalamazoo—or rather, between Kalamazoo and Fort Wayne, if it is less than carload, however much there is of it, that freight will be moved by a Willett truck, will it not?

A. No.

Q. When would any of it move by rail?

A. Every day.

Q. Just so much as you want to load in a car; is that correct! A. No, sir. We have sufficient tonnage every day to make a

car from Fort Wayne to Kalamazoo, and from Kalamazoo to Fort Wayne; and we will do it. However, there may be times when we will send some of the freight on a Willett truck. For instance, if a shipment of freight is received in the morning, prior to the departure of the Willett truck, that shipment will move on the Willett truck.

Q. Well, now, you have stated in your testimony here that the purpose of this application was to get authority to send your less-than-carload freight via Willett truck, have you not?

A. I don't think I said: All of the less-than-carload freight.

Q. All right. Then it will not be all of it?

A. No, sir, it will not. We will have the right, under this application, if it is granted, to haul freight from Fort Wayne to Kalamazoo by truck, and we will haul some of it that way; but the volume of freight is so much, so great, that it will have to go in a car also.

Q. Some of it.

A. Yes, sir; we will handle some of of freight that way.

Q. Yes. And that is what you are asking for.

A. Yes.

Q. And you want to handle some of it the other way.

A. Yes.

Q. And that is the reason you are asking here for that.

A. Yes.

Q. So that some of it will be handled direct from the door of the consignor, to the door of the consignee, will it not!

A. (No answer.)

Q. I mean, I did not intend to make any suggestion. I was

merely asking you a question.

Mr. HARRY YOCKEY. Well, now, I object to that question, if the Board please. Counsel is again getting into the question of pick-up and delivery service.

Mr. Anderson, No.

Mr. HARRY YOCKEY. Why should we take the time to go into that question?

Mr. Anderson. I will tell you why-

The WITNESS. I will answer it.

Mr. BARKELL. All right; go ahead and answer the question.

A. Yes, sir; some of it will be from the door of the consignor, or the shipper, to the door of the consignee, or receiver, but not by Willett truck.

548 By Mr. Anderson:

Q. By what kind of a truck will it be handled, or will it move, then?

A. Well, I just cannot tell you at this moment who is delivering the freight for us in Kalamazoo. I do not know the name.

Q. When you say that it will not be handled by a Willett truck, do you mean that it will be handled by some local agent there

A. Yes.

Q. - or some local cartage company!

A. Yes.

Q. That is serving The Willett Company?

A. Yes.

Q. At least, it will not move in a rail car.

A. That is right. We will pick up the freight in Fort Wayne, from the door of the shipper, provided it is within the terms of our pick-up and delivery tariff.

Q. Yes.

A. And we will possibly truck the freight over to Willett in Fort Wayne, and then we will deliver it at Kalamazoo.

Q. Well, now, who pays for the service of the local cartage man; who pays him?

A. The Pennsylvania Railroad.

Mr. BARKELL. Now, Mr. Witness, I wonder if it is necessary for you to elaborate as you have been doing, in all of your answers to these questions.

The WITNESS. Well, I want to make my answers clear.

Mr. BARKELL. Well, I am just wondering if it is necessary for the purpose of this record?

The WITNESS. I would like-

Mr. BARKELL. It is consuming a good deal of time. .

The WITNESS. I would like to answer these questions directly, but the questions are such that they might have a tendency to make you believe that all of this is a fact, when it is not a fact.

Mr. Anderson. No-

The WITNESS. And that is why I would like to elaborate a little bit, just so I am sure that the record is clear.

Mr. Anderson. No. your Honor-

Mr. HARRY YOCKEY. It seemed to me, your Honor, that the witness was doing his best to answer the questions directly.

Mr. Eccers. I think a good deal of what the witness has been saying should more properly be developed on redirect examination.

Mr. HARRY YOCKEY. The questions, if your Honor please, go first to The Pennsylvania Railroad Company, and then to The Willett Company, first in one instance, and then in the other, and the witness has got to explain, to keep the record clear.

Mr. Anderson. All right. I will try and make my questions even more definite and specific, if that is possible. I thought I

was doing that; but-

Mr. HARRY YOCKEY. In other words, the evidence which goes to The Pennsylvania Railroad Company, the witness wants to be sure the record indicates goes to The Pennsylvania Railroad Company, and that is why he has to specify, and make some of these explanations.

Mr. BARKELL. Well, we will ask you, Mr. Witness, to answer the

questions yes or no, whenever that can be done.

The WITNESS. All right, sir.

Mr. CLARDY. I would like to say amen to that, your Honor, because when I get to him, I do not want to have him arguing with me as he has been here.

Mr. HARRY YOCKEY. I submit that the witness has not been doing anything of the kind. Ask the questions, and he will answer them.

By Mr. Anderson:

Q. Now, Mr. Witness, when you talk about all of it, I am not concerned with that, and I am not asking about that. The point

flowing over this route on Willett trucks from point to point, is only that freight which you ask for authority to haul by Willett truck—and when I say "you" I mean, of course, The Willett Company, the applicant in this proceeding, in the first instance—is it not?

A. Repeat that,

Mr. Anderson. Read it, please.

(Question read.)

The WITNESS. I am sorry, but I still do not understand that question.

Mr. Anderson. Well, all right, then. I will restate it, and try to clarify it for you.

.. The WITNESS. Yes.

By Mr. Anderson:

Q. You seem to have been confused, Mr. Witness, or perhaps I have confused you into thinking that I was talking about all of it, all of the freight, and I am not. But is it, not true that some of the freight, whatever amount it may be, that moves between the two points, let us say again, of Fort Wayne and Kalamazoo by Willett truck, is that part of the freight moving between those two points that The Pennsylvania Raitroad had in mind, that it wanted to move by truck, when it asked The Willett Company to file this application?

A. That is correct.

Q. All right. And the same thing would be true also of Fort Wayne and Sturgis, Michigan, would it not?

A. Yes.

Q. Now, is it not true that all common carriers by motor vehicle use local agents, and do not use their own trucks for local pick-up and delivery service?

A. I don't know.

Q. You know that many of them do, do you not?

.A. No.

Q. You do not?

A. No, sir. That is, I assume they do.

Q. All right.

A. But I don't know.

Q. The Willett Company does not differ from any other common carrier by motor vehicle, in saying, "Well, actually, The Willett Company will not do any pick-up and delivery service, because we employ a local agent," does it?

A. (No answer.)

Q. Do you consider it peculiar to The Willett Company to do that?

A. No, sir; The Willett Company does not hold itself out to haul for the general public.

Mr. BARKELL Read that last answer, please, Mr. Reporter.

(Answer read.)

Mr. Anderson. I move to strike out the answer. I did not ask him anything about that. Answer the question, please.

By Mr. ANDERSON:

Q. Do you consider that peculiar to The Willett Company

A. (No answer.)

Q. I mean, Mr. Witness, is there something different about

that, than there is about any other trucking company?

A. Why, I would say, if I understand your question correctly, so far as the delivery of the freight is concerned, that is, as to who it is delivered by, there is nothing different practically from the way any other trucking company would deliver it.

Q. All right.

553 A. Exactly.

Q. In other words, then, the fact that the company, The Willett Company, uses a local cartage company to do the pick-up and delivery work, is not—

Mr. HARRY YOCKEY. Now, just a moment. I want to object, if the Board please. There is nothing in this record to indicate that The Willett Company employs any cartage company—

Mr. Anderson. He has just said that they do.

Mr. HARRY YOCKEY, No.

The WITNESS, No. sir.

Mr. HARRY YOCKEY. It is the railroad.

Mr. Anderson. That is not what he said.

Mr. HARRY YOCKEY. You do not know what you are talking about.

Mr. Anderson. Well. I do not know that we need that observation on the record. It may be that I am confused as between The Pennsylvania Railroad Company and The Willett Company, because of the way those names have been used interchangeably all through this hearing.

Exam. Harrison. Now, gentlemen, let us not have any more of these exchanges between counsel. If you have an objection to make, address it to the Joint Board, and it will be ruled on.

Mr. ANDERSON. All right.

By Mr. ANDERSON:

Q: Now, Mr. Witness, are there any peculiar or distinctive characteristics about this arrangement that you 554 have been talking about here; and for which you are ask-

ing for authority here, merely because The Pennsylvania

Railroad employs local cartage companies to render pick-up and

delivery service at certain points?

A. I would say "No," to that question, as far as the pick-up and delivery is concerned, but the freight is different, because it is railroad freight that they are hauling. The freight is different—

Q. All right.

A. —but so far as the local pick-up and delivery is con-

Mr. Anderson. Now, just a moment, Mr. Witness. You have answered the question, and for the purpose of my question no further explanation is necessary. Your answer is, then, it is not distinctive in that particular, is it?

A. Right.

Q. All right. Now, getting back to the statement you just made, which has been made pretty much throughout this hearings that it will only haul—and by "it" I mean The Willett Company—that The Willett Company only proposes to haul for The Pennsylvania Railroad: I will ask you to explain to the Joint Board why you say that, and why you yourself think it is true, even, when The Pennsylvania Railroad is going to solicit business from every single shipper who has any to solicit, doing business at any point along this route.

The Willett Company will be handled on Penn ylvania Railroad bills—on Pennsylvania Railroad bills—on Pennsylvania Railroad tariffs, and Pennsylvania Railroad bills of lading. They will be responsible for it, and for that reason I would say that the operation of The Willett Company is different from any common carrier truck company.

Q. And your answer, then, is that that is the reason, and the only reason, that you say they are only hauling for The Pennsyl-

vania Railroad; is that correct?

A. I don't just get that question. You have asked me for the difference

Q. No. I asked you if that is the reason for your saying that it is only hanling for The Pennsylvania Railroad. That was my question.

A. You asked me to explain it.

Q. I did not ask you anything of the kind.

Mr. HARRY YOCKEY, Counsel asked as to your answer, Mr. Christie.

By Mr. Anderson!

Q. I asked you why you say it is true that they are only hauling for The Pennsylvania Railroad. Now, I submit, the record will show that is the question that I asked.

A. Réad the question, please.

Q. (Question read.)

The WITNESS. Will you go back and read those other questions and answers also?

556 (The record was read.)

The WITNESS. I told you that The Willett Company is only going to haul for The Pennsylvania Railroad. I answered that question.

Mr. BARKELL. That is right.

Mr. Anderson. That may be true; but then, I asked you another question. I asked you the further question: "Is that your only reason?"

The Wryness. Well, it is the only reason that I can think of right now. There may be different reasons, but I don't know.

Mr. Anderson. All right. I think that goes to the whole thing.

By Mr. ANDERSON:

Q. In other words, because The Willett Company freight will move on a waybill of The Pennsylvania Railroad, or on a freight bill or a bill of lading of The Pennsylvania Railroad, and moves on order of The Pennsylvania Railroad, and was solicited by an agent of the Pennsylvania Railroad, then it is handling only Pennsylvania Railroad freight, and that is the only reason that you can think of, is it?

Mr. HARRY YOCKEY. Well, now, just a moment. I object to that

question as argumentative, your Honors.

Mr. BARKELL I think that question is rather confused, Mr. Anderson.

Mr. Anderson. All right. I will go back to my other question, then, your Honor.

By Mr. ANDERSON:

Q. Mr. Witness, can you think of any other reason?

A. Not right now.

Q. There is no limit to the number of trucks which The Willett Company may put on in this service, is there, any more than in any other common carrier service!

A. No.

Q. No. Now, I direct your attention, Mr. Witness, to applicant's Exhibit No. 6. Do you have a copy of that exhibit before you?

A. Yes.

Q. You testified in that connection as to savings that might be effected by the rail-truck movement, meaning The Pennsylvania Railroad and The Willett Company, between certain joints, and from certain points to certain points; and I will ask you now to

state if that same saving could not be effected, or if approximately. the same saving in time could not be effected by The Pennsylvania Railroad interlining and transferring its freight at the break point shown there, to other authorized common motor carriers operating over the same route as you are proposing to operate over here?

Mr. HARRY YOCKEY, Just a moment. I object to that as not being involved in this particular issue. The Interstate Commerce

Commssion has held that it does not have any jurisdiction to require the entering into of a relationship with truck

lines, and that question is not involved in this case.

Mr. Barkell. I do not think that was the question, Mr. Yockel. Counsel said: "Could the saving be made if they entered into an arrangement with some common carrier."

Mr. HARRY YOCKEY, With other common carriers?

Mr. BARKELL, Yes.

Mr. ANDERSON. That is right.

Mr. HARRY YOCKEY. Other than with The Willett Company?

Mr. Anderson. Yes.

Mr. HARRY YOCKEY. Or a subsidiary!

Mr. Anderson, Yes.

Mr. BARKELL: The objection is overruled, and the witness may answer the question.

Mr. Anderson. That is exactly the question.

Mr. HARRY YOCKEY, I still submit; if the Board please, that the Commission has no jurisdiction to go into that question.

Mr. Anderson. Why, of course, the Commission has jurisdiction

to go into it.

Mr. Barkell. Let us not get into any further argument between counsel, gentlemen..

Mr. Anderson. The Board has ruled.

Mr. HARRY YOCKEY. Yes; it has ruled. Mr. CLARDY. What is the ruling? you Honor?

Mr. BARKELL. The objection is overruled. Let us proceed.

By Mr. Anderson:

Q. Now, will you answer the question.

A. Repeat the question.

Mr. Anderson. Read it, please.

(Question read.)

A. I don't know. The question is such that I don't want to answer it, or try to answer it, any other way than what I have. I don't know what we could do, because I haven't investigated

By Mr. ANDERSON:

Q All right. Assume, then, that O. I. M. Transit Corporation is operating at the present time, as it is, regularly, daily, an authorized, certificated service between Fort Wayne, Indiana, and Kalamazoo, Michigan, and that that company has trucks leaving Fort Wayne three times during the period of 24 hours, in the early morning, evening, and at midnight, and that that line would, if you wanted them to, interline with you and exchange freight. Now, my question is, if that is true, could not the same saving be effected by interlining with O. I. M. Transit Corporation at Fort Wayne, that could be effected by using The Willett Company at Fort Wayne for the Kalamazoo freight?

A. What do you mean by "interlining"? I want to be sure I

understand what you mean, before I try to answer.

Q. Well, I am not so sure that I am familiar with it either: But what I have in mind is, transferring, by participating in the same tariff; the transfer of freight to a connecting line under a participating tariff.

A. We will not do it.

Q. I did not ask you that.

A. Then the saving in time cannot be made, because we will not be a party to any situation of that sort.

Q. Well, now, that is not any answer to my question. I will ask

you to answer the question.

Mr. HARRY YOCKEY. May I just quote your Honors one sentence from that case on the question of jurisdiction?

Mr. BARKEL. That has been ruled on.

Mr. HARRY YOCKEY. Pardon me?

Mr. BARKELL. That has been ruled on.

Mr. HARRY YOCKEY. Well, what I have stated is the law.

Mr. Anderson. It is not the law at all. We will deal with that in our brief, or go into it right now if the Joint Board wants.

By Mr. Anderson:

Q. Now, Mr. Witness, I would like to have you answer my question.

Mr. Barkell. Let us proceed, gentlemen. The witness may answer the question.

By Mr. HARRY YOCKEY:

Q. Do you understand the question?

A. Why, I think I understand it, yes, sir; but if I answer it, and then find that I didn't understand it, it will be held against me.

Mr. BARKELL. Counsel is still asking you that same question, and you may proceed to answer it if you can.

A. Well, I would like to answer the question in this way: In the first place, I do not know that they have got the right to do itBy Mr. Anderson:

Q. Now, I did not ask you anything about that, Mr. Witness. I said, assuming that they have the right.

A. Well, let me finish.

Q. No. I want you to answer the question. I will not stand for any more argument.

·A. All right.

Q. I want an answer to my question.

A. Well, then, assuming that they have the right to do that and assuming further that they would perform the service in the same manner that The Willett Company will—

Q. Assuming what?

A. Sir?

Q. What was that last?

A. I say, assuming further that they will perform the service in the same manner that The Willett Company will, then it could be; yes.

Q. The same saving in time would be effected?

A. It could be; yes.

Mr. Anderson, That is all. .

Mr. Moberly. I have just a few questions, your Honor.

Mr. Barkell. Just a moment, please. Before proceeding 562 any further, gentlemen, may I make the request of all counsel that they endeavor to frame their questions so that it will not be necessary to get into an argument with the witness about the answer, and then have the answer read, and then have the question read, and consume a lot of time unnecessarily, the way we were doing here yesterday:

Mr. CLARDY. I will assure you that I will try to frame my ques-

tions so that they will permit a yes-or-no answer.

The WITNESS. I would like to say, I think that a lot of these questions have just simply put the witness behind the 8-ball.

Mr. Anderson. There is just one further question if the Board please, on this point that just came in right along this same line, and that is this.

By Mr. Anderson:

- Q. Mr. Christie, have you made any study at all with respect to what might be done, or what saving in time might be effected by interlining, as I said, or transferring freight under participating tariffs, with other authorized certificated common carriers?
 - A. None whatever; no, sir.

Q. All right.

A. We are not interested in that.

Q. But you say, you have not:

A. No.

Q. Because you are not interested.

563 A. No.

Mr. ANDERSON. That is all.

Mr. BARKELL. Mr. Moberly.?

Mr. MOBERLY. Yes.

By Mr. MOBERLY:

Q. Mr. Christie, apparently there has been some confusion in the record here, because of the attorneys for protestants, at least, using the pronoun "they" rather indiscriminately, when referring to The Willett Company and to The Pennsylvania Railroad Company. Now, The Pennsylvania Railroad views its own organization, and that of The Willett Company, as two distinct entities, two distinct organizations, does it not?

A. Yes.

Q. And the operations are two distinct operations in your view, are they not?

A. Yes.

Q. That is, in the view of The Pennsylvania Railroad?

A. Yes, sir.

Q. Now; when, on your direct examination by your counsel here, Mr. Yockey, you made the statement referring to the service that is to be offered, or that is to be rendered by The Willett Company as being supplemental to the rail service, you meant by that, did you not, that the operations to be conducted by The Willett Company will be conducted between points which are at

the present time served, and which will continue to be served by The Pennsylvania Railroad? That is correct, is it not?

A. Yes.

Q. Then there will be no actual substitution of service, will there!

A. Yes, sir; there will be a substitution, and a supplemental

service, I would say.

Q. Well, the railroad will continue its operations, and The Willett Company will engage in such operations over those routes as may be necessitated by whatever freight The Pennsylvania Railroad will turn over to The Willett Company; is that correct!

A. The Pennsylvania Railroad will still haul freight to any of these points, whenever it is required to haul freight by rail to any of these points that The Willett Company will serve on these proposed routes. Now, The Willett Company will serve those points for The Pennsylvania Railroad; and The Pennsylvania Railroad will serve them direct.

Q. And The Pennsylvania Railroad, then, will continue to operate those local freight trains, even though the service of The Willett Company is instituted; is that correct?

A. The Pennsylvania Railroad will continue to operate the local freight trains; yes, sir; but it will discontinue the operation of the peddler car, or way-car on the local freight trains, and that will only be used if and when necessary.

Q. Well, then, following your previous statement, that the operations of The Pennsylvania Railroad are separate and dis-

tinct from the operations of The Willett Company, and vice versa, there will be an additional operation in the field over the routes proposed, if this application is granted; that is true, is it not?

A. Well, I will answer that-

Q. Well, now, Mr. Christie, that question can be answered yes

A. No, sir; that question cannot be answered by a yes-or-no answer, for this reason, that you do not understand-

Mr. Morealy. Now, if the Joint Board please, I submit that my question is very clear and understandable, and I submit that the witness should be required to answer it in the first instance yes

Mr. HARRY YOCKEY. I do not think, your Honors, just as the witness started to say, that the question can be answered by yes

Mr. BARKELL Read the question, please.

(Question read.)

Mr. HARRY YOCKEY. I do not think that question calls for a yesor no answer .

Mr. MOBERLY. I submit that it does, if the Board please, and I submit that it can be properly answered in such manner.

HARRY YOCKEY. What is the additional service!

Mr. BARKELL I think that the question can be answered yes or no. The question is as to whether or not there will be an additional service in the field, or additional service instituted.

A. I would not say that it is an additional service, no, sir.

By Mr. BARKELL:

Q. Well, your answer is "No," is it?

By Mr. MOBERLY:

Q. You desire, then, do you, Mr. Christie, to stand on the answers which you have heretofore given me, in response to my previous questions?

Mr. HARRY YOCKEY. Well, now, I object to that question, as to what the witness desires to stand on, if your Honors please. The

record will speak for itself.

Mr. BARKELL. What was that last question, please, Mr. Reporter?

(Question read.)

Mr. HARRY YOCKEY. Why should we get into another argument here on the record? He is bound by the record, so what difference does it make?

Mr. BARKELL I think you are right about that.

Mr. Momerly. May I say just this one thing, your Honor: I am about through with my cross-examination of the witness. It seems to me that the witness, in answering my previous questions, has established, or attempted to establish, the fact that there are separate and distinct services here. I want to clear the matter up

for the record, and for myself also. Now, when I get down to this last question, the witness says, "No." I am satisfied to stand on the record, myself, as far as that is concerned.

Mr. HARRY YOCKEY. Well, if counsel is willing to stand on the record, let him stand on it.

Mr. Mobraly. It seems to me, however, for the benefit of the record, that we should have the matter cleared up.

Mr. Eggers. I think that is as far as you have to go, Mr. Moberly. Exam. Harrison. The witness is under oath here.

Mr. MOBERLY. I realize that.

Mr. HARRY YOCKEY. We are agreeable to standing on the recordalso, so let us not ask any such questions as that.

Mr. Moberty. I will, of course, ask the witness any question I see fit.

Mr. HARRY YOCKEY. And I will object to any question of that sort.

Mr. Moserry. That is your right, of course.

Mr. HARRY YOCKEY. We know it.

Mr. Anderson. That is all right, but do not tell us what kind of questions to ask.

Exam. Harrison. Now, gentlemen, I want you to refrain from this argument back and forth across the table between counsel. If you have any objection to make, address it to the Joint Board, and the Joint Board will rule on it.

Mr. BARKELL. Yes. Let us get along.

By Mr. Moberly:

Q. Now, Mr. Christie, you testified relative to a saving of time, some saving of time, obviating the necessity of the transfer of freight at Fort Wayne from one rail car to another rail car if the authority which is sought here is granted. Is that correct!

A Yes.

Q. And I believe that the saving in time that you mentioned in that connection, was 24 hours.

A. Yes.

Q. That saving will not apply in all instances to freight moving through Fort Wayne to points on this route; is that correct?

A. By rail or by truck?

Q. Rail.

A. No, sir. Any shipments moving through Fort Wayne, and along this route by rail, will receive the same service that they do at the present time.

Q. And you will continue to ship by rail through Fort. Wayne to

points along this route, will you not?

A. To some points, yes.

Q. So that in those cases, then, there will not be any saving of 24 hours in time, will there?

A. No.

Q. By virtue of doing away with any interchange at Fort Wayne?

A. That is correct.

Q. Now, on your direct examination by Mr. Yockey, I believe you stated that The Pennsylvania Railroad will originate all of the freight along this proposed route.

A. Yes.

Q. By that statement you meant that the freight would travel on Pennsylvania Railroad freight bills, and would be secured by Pennsylvania Railroad solicitors, did you not?

A. I meant that the freight would travel on Pennsylvania Rail-

road bills of lading and waybills and tariffs.

Q. But you did not mean that the physical origination would be by the Pennsylvania Railroad in all cases, did you?

A. I meant that the freight will be shipped over the Pennsyl-

vania Railroad by the shipper.

Q. Although actually The Willett Company may, and will, pick the freight up at its origin point and deliver it to final destination in some instances?

A. I haven't said-

Mr. BARKELL. Just a moment. He has answered that question at least once, as I recall it.

Mr. Moberly. If he has answered the question I will pass it,

then. I believe that is all.

Mr. Eggers. I would like to ask a few questions at this point,
just to clear up a few matters.

By Mr. Fogers:

Q. Mr. Christie, first getting back to this matter of the saving that you went into: I do not recall exactly the figures, but you do not have any exhibit, do you covering any saving which would result if the application were granted?

A. No.

Q. Did you in the figures that you have compiled, or in any investigation which you may have made, consider the expense involved to The Willett Company in operating these trucks, keeping in mind the matter of servicing or repairs, or anything of that sort? Did you take that into consideration?

A. I took into consideration the cost of operation of the trucks, yes, sir, what it would cost—what the trucks would cost The

Pennsylvania Railroad.

Q. That is, the contract price.

A. Yes.

Q. That includes overhead and all other expenses, incidental expenses incurred by The Willett Company, does it?

A. It includes everything.

Q. The total operating cost?

A. Yes.

Q. And that was reflected in the evidence which you gave with respect to saving to the Pennsylvania Railroad; is that correct!

A. When I made the statement that there would be a saving to The Pennsylvania Railroad, which was the only statement I made, that there would be a saving, I said that it would be more

of a reduction in operating cost to The Pennsylvania.
Railroad, than what the total cost of The Willett Company would be in this service.

Q. You say, you made that statement?

A. Well, I made the statement that there would be an economy in it, but I guess that is all they would let me say just at that time.

Q. All right. So much for that, then. Now, do you know whether or not you require authority from any state commission, either of Michigan or Indiana, to take off this way-car that you have been speaking of?

A. No.

Q. Or do you know anything about that-

A. How?

Mr. Eggers. Read the question, please.

(Question read.)

A. We do hot.

By Mr. EGGERS:

Q. You do not?

A. It is my understanding that we do not:

Q. That is strictly an operating problem with your own company. The Pennsylvania Railroad Company, is it?

A. Well, Kipp's tariff gives us the right, of course, to substitute

truck service for rail service.

Q. These will not be any change in your tariffs or your schedules, or in the holding out of ervice to the public, if this application is granted, will there?

A. If the application is granted, our offer of service to the public would be based on expedition of the service, in connection with the Willett truck operation. We would solicit freight on the assumption—or predicate it on the fact that we were going to expedite it.

Q. And the reason that you say you will remove the way-car is solely because there will be no freight for that way-car; that

is correct, is it not?

A. Yes, sir: that is correct—with the exception of—there will be a few exceptions. Now, what I meant by this gentleman's question over here, Mr. Moberly—or rather, what I mean by my answer to that question, was this, that a shipper has the right to demand that his shipments come by rail, and if he does that, then we will have to send a car up there for them.

Q. Then you will have to have that way-car?

A. No, sir. We will not send the way-car, unless it is a case where the shipper demands it; and we have never yet had such a case.

Q. But if they do demand it-

A. Then we would send it.

Q. - then you have to send the car?

A. Yes, sir.

Q. All right. So much for that matter, then. Now, I believe you made one statement here which is not quite clear in my mind, to this effect, that if there was freight originating at

573 Fort Wayne, destined for Kalamazoo, some of that freight would move entirely by rail, and some of it would move by motor carrier; is that correct!

M. Yes.

Q. All right. Now, what will determine what goes by rail, of that freight, and what goes by motor carrier?

A. In case the car had been loaded and pulled from the house, and we would get a shipment in the rning, before the departure of the truck from Fort Wayne, freight for Kalamazoo, we would send it up on the truck.

Q. But if it arrives or if it comes in after that time, then what-

would happen to it?

A. Well, then we would put it into a car and send it up that night.

Q The freight, then, that does not make the truck at nine o'clock in the morning, under your tentative schedule—is that the correct time, nine o'clock.

A. I believe so: yes, sir.

Q. —that freight will not be expedited at all, will it?

A. The way it is handled now, do you mean?

Q. Yes.

A. No. sir.

Mr. Ecores. I believe that is all.

By Mr. DES ROCHES:

Q: Mr. Christie, are you familiar with the operations of a common motor carrier operating between Cadillac, Michigan and Lake City, Michigan?

A. I know something about it, yes.

Q. That particular common carrier, an independent common motor carrier, so-called, is at the present time transporting freight for The Pennsylvania Railroad between those two points; that is true, is it not?

A. Yes.

Q. And that particular independent common motor carrier has been transporting freight for The Pennsylvania Railroad Company between those two points for how long, if you know?

A. Well, I believe it has been since December, 1939, if I remem-

ber correctly. It is something like that, anyway.

Mr. Eggers. Pardon me. What were those two points again, please?

Mr. Des Roches. Cadillac and Lake City, Michigan.

Mr. Eggers. Cadillac and Lake City?

Mr. Des Roches, Yes.

Mr. EGGERS. Thank you.

By Mr. DES ROCHE:

Q. Now, Mr. Christie, those two points are involved in this application here, are they not?

A. Yes.

Q. You are asking here to have the applicant serve these two particular points, are you not?

A. Yes.

Q. Although those points are being served at the present time by the common motor carrier just referred to?

A. Yes.

Q. And the points are being satisfactorily served, are they not?

A. Well, I wouldn't say that; no, sir. Q. You would not say that?

A. No.

By Mr. BARKELL:

Q. What would you say?

A. I would say that we can, by the use of our subsidiary company here, if this application is granted, and we will, expedite the service to those points. By Mr. DES ROCHES:

Q. Well; this particular common carrier operates a daily service between those two points, does it not?

A. Yes.

Q. How many services does it operate between those two points, daily services, if you keew?

A. One.

Q. One?

A. Yes, sir.

Q. Do you know how many pieces of equipment that particular common motor carrier is operating between those points?

A. Well, the last time I knew of it, he had one truck.

Q. One truck?

A. Yes, sir.

Q. Now, under what arrangement is that freight being handled at the present time?

A. (No answer.)

Q. What is the tariff relationship?

· A. It is under an agreement.

Q. A special agreement?

A. Yes.

Q. What is the agreement?

A. Well, the agreement is that he will handle the freight up there for us, and we will pay him so much for doing it—the ordinary agreement. I do not recall all of the details of it.

Q. That was an unusual arrangement for a railroad company

to enter into, was it not?

A. No.

Q. Well, I thought you made the statement here a little earlier in your testimony, that your railroad company would not do business with a so-called independent common motor carrier.

A. I think that the testimony shows—I think that the record

here will show that we have in several instances-

Q. Oh, in some instances you have?

The WITNESS. Let me finish, please.

Mr. DES ROCHES. Yes.

A. That we have in several instances made such an arrangement on a short haul like that, with an independent company.

By Mr. DES ROCHES:

Q. You have done it in those cases where you have been more or less compelled to do it; is that not the fact?

Mr. HARRY YOCKEY. Well, now, just a moment. What do you mean by "compelled to do it"?

Mr. DES ROCHES. I think the language of my question will speak for itself.

Mr. HARRY YOCKEY. Well, then, I object to the question as not being clear and understandable.

By Mr. DES ROCHES:

Q. You understand my question, do you not, Mr. Witness?
Mr. HARRY YOCKEY. I submit that "compelled to do it" is not clear.

A. I understand it; yes, sir.

By Mr. DES ROCHES:

Q. Will you answer it, then.

The WITNESS. There was an objection, and I don't know whether I am supposed to answer it or not. Shall I answer?

Mr. BARKELL. I suggest that you reframe the question, counsel, omitting the language to which Mr. Yockey has objected.

Mr. Des Roches. All right, your Honor. I will withdraw the question and ask another one.

By Mr. DES ROCHES:

Q. Now, then, Mr. Christie, who signs the bills of lading covering the freight that is transported by the applicant, The Willett Company of Indiana?

A. Well, in some instances—well, generally, the agent signs the bill of lading, but in some instances the trucker may sign

578 it for the agent,

Q. All right: Whose name appears on the bill of lading, that of The Pennsylvania Railroad Company or The Willett Company!

A. Well, the name of The Pennsylvania Railroad Company

should appear on the bill of lading.

Q. Well, as a matter of fact, whose name actually does appear

on it? That is what I want to know,

A. I don't know. I don't know that I have ever seen one of them; but the name of The Pennsylvania Railroad Company certainly should appear on it.

Q. Well, then, where is there any privity of contract between a customer of The Pennsylvania Railroad Company and this applicant, in connection with the transportation of freight of The

Pennsylvania Railroad Company?

Mr. HARRY YOCKEY. Well, now, just a moment. I object to the question. There is no privity of contract, and the witness has testified to that at least a half a dozen times here. If that is the conclusion counsel is trying to develop, we are just wasting our time, going into that sort of a question.

Mr. DES ROCHES. I want to find out, if your Honor please,

who is going to pay losses, if any-

Mr. HARRY YOCKEY. He has already testified—

Mr. Des Roches. Covering damage in transit; who is going to pay claims covering loss or damage in transit?

Mr. HARRY YOCKEY. The witness has already testified

579 That it will be The Pennsylvania Railroad.

Mr. BARKELL. One at a time, now.

Mr. Eggers. Yes. Give the Reporter a chance.

Mr. DES ROCHES. I am sorry.

Mr. BARKELL Go ahead.

Mr. Des Roches. You say there would be no claim on the part of the customer against The Willett Company; the claim would have to be proven against The Pennsylvania Railroad Company.

Mr. HARRY YOCKEY. I say there has already been evidence introduced here that The Willett Company has certain types of insurance, covering every phase, which goes to The Pennsylvania Railroad.

Mr. DES ROCHES. That would not make any difference if there was no privity of contract between the customer and the carrier, and I want to know whether there is or not.

Mr. HARRY YOCKEY. What carrier do you mean?

Mr. BARKELL. The objection is overruled. The witness may answer the question.

The WITNESS. Do I understand that you want to stick us for a claim?

By Mr. DES ROCHES:

Q. I want to know who signs the bill of lading. .

A. I will have to say that I don't know.

Q. You do not know?

580 A. No.

Q. Well, who would know as to that, connected with your company?

A. Well, the agent at Cadillac probably would know.

Q. Well—

A. However, I can tell you how it should be signed.

Q. How should it be signed?

A. If it is a shipment of the Pennsylvania Railroad, it should be signed by the Pennsylvania Railroad—well; I do not mean, by the Pennsylvania Railroad, either. I mean, the name should be signed on it as representing The Pennsylvania Railroad Company by the company that actually receives the freight.

Q. Well, then, if I understand your answer correctly, the name

Willett does not appear on the bill of lading at all, does it?

A. Not to my knowledge it does not.

Q. And the customers, then, of The Pennsylvania Railroad Company in case of any loss, would look to the railroad company for reimbursement; is that correct?

A. Certainly.

Q. And not to The Willett Company.

A. I don't know how The Willert Company enters into it.

Q. Well, is not The Willett Company the carrier in this particular case?

A. In which case?

Mr. HARRY YOCKEY. Well, now, just a moment. I object to the question. Counsel is just simply arguing with the witness, now. The contract will speak for itself, and I object.

Mr. DES ROCHES. I am not talking about Cadillac and Lake City now. I am talking about the operations over these new routes.

The WITNESS. Oh.

Mr. HARRY YOCKEY. I did not understand.

The WITNESS. I thought you were talking about Cadillac.

Mr. DES ROCHES. No.

The Witness. I misunderstood you. My answers were all predicated on the agreement that we have between Cadillac and Lake City.

By Mr. DES ROCHES:

Q. No; I have gotten away from Cadillac and Lake City, now, and I am talking about operation over the seven routes.

A. I was not following you correctly, then. Let us get back

to the question.

Q. All right. Who does sign the bills of lading in connection with operations over the seven routes involved in this application?

Mr. HARRY YOCKEY. Do you mean who will?

Mr. Des Roches. Pardon me?

Mr. HARRY YOCKEY. Who will, you mean.

The WITNESS. Who will do it?

Mr. HARRY YOCKEY. Yes.

Mr. Des Roches. Yes.

A. The Pennsylvania Railroad agent.

By Mr. Des Roches:

Q. The Pennsylvania Railroad agent?

A. Yes, sir.

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Q. All right.

A. Now, I would like to modify that.

Mr. BARKELL. All right.

A. And say that if and when we call upon The Willett Company to perform a pickup and delivery service for us at any of

these stations, then they will sign the bill of lading for The Pennsylvania Railroad; but it will read "Pennsylvania Railroad" as the carrier, and then "Willett Company" as the agent.

By Mr. DES ROCHES:

Q. "Willett Company" as the agent?

A. Yes.

Q. Is The Willett Company performing that particular type of service at Grand Rapids?

A. Yes.

Q. At this time?

A. Yes, sir.

Q. Now, then, you spoke yesterday of the fact that if this application is granted, the applicant will add approximately 10 men to its employ. Did I understand you correctly?

A. No, sir; I don't believe I said that.

Q. Well, then, did you hear that testimony?

A. Yes.

Q. Now, you have spoken of the savings here today.

Necessarily, if this application is granted it will mean, will it not, that the railroad will probably lay off ten or more employees?

A. It will not.

Q. It will not?

A. No.

Q. But still you are dropping the crews, and making changes in connection with the switching arrangements, and still there will be no change in personnel?

A. That is correct.

Q. There will be no saving there at all?

A. I didn't say that.

Q. There will be a saving in pay, though, will there not?

A. There will be a saving in overtime, which they claim they

do not want, anyway.

Q. Will the individuals who are connected with the railroad at these particular points, put in as many hours per week as they are putting in at the present time—I mean, if this application is granted?

A. At these points, you say?

Q. I mean, at any of the points that are involved in this ap-

plication.

- A. Well, now, I stated this, that there would be a saving in overtime, as far as the operation of the local crews is concerned, and there will be—
- Q. Do you mean that they will receive less money per 584, week than they are receiving at the present time?

A. Certainly they will; yes, sir, and along with that they will work less hours.

Q. Substantially less?

A. I would not say substantially less; no, sir.

Mr. DES ROCHES. That is all.

By Mr. CLARDY:

Q. Witness, to continue right along on that same point for a moment or two further: When you answered an earlier question about the elimination of the peddler cars, you said that they would be eliminated, and then you proceeded to qualify your answer in such a way as to indicate that they would not be entirely eliminated. Now, let us see if I correctly understand you. You intend to operate exactly the same number of local freight trains that you are operating at the present time; that is right, is it not?

A. Yes. .

Q. And you do not intend to eliminate the peddler cars from the operation of those way-freights in every instance, in the way-freight operation, do you?

A. Well, I would say that there would be

Q. Now, pardon me, Witness. That question admits of a yes or no answer, and then if you want to explain it, all right.

Mr. BARKELL. I think so.

Mr. CLARDY. But first, give me an answer to my question, yes or no. Then if you want to explain, you may.

The WITNESS. Repeat the question.

Mr. CLARDY. Read it, please.

(Question read.)

A. No, sir. There might be a few isolated cases, in which we would have to operate a way-car.

By Mr. CLARDY:

Q. So far as the specific point of Kalamazoo is concerned, when you are serving it out of Fort Wayne, do I correctly understand that you intend to have a car in the way-freight destined to Kalamazoo, with that less than truckload freight, as a regular proposition?

A. We do not intend to operate any peddler car between Fort Wayne and Kalamazoo, unless as I say, it might be in an isolated case where some person might demand that the freight be shipped by rail.

Q. Well, now, you told me—or you told somebody here, rather, a little bit earlier in your testimony, that insofar as Kalamazoo and Fort Wayne are concerned, there was so much of that business available, that it would move almost exclusively in rail service—did you not?

A. Yes.

Q. All right. Now-

A. I would like to say this-

Q. Well, just a moment, Witness. Let me ask another question.

A. Well, let me get you straight on that.

Mr. CLARDY. No. I am doing the examining now, and you have answered my question, and I want to ask you another one.

Mr. HARRY YOCKEY. Oh, now, just a moment. A witness always has the right to explain an answer, if he wants to explain it.

Mr. Clardy. There is no question pending, and I am about to ask the witness another question.

Mr. BARKELL, Go ahead.

By Mr. CLARDY:

Q. Would that car, bringing that merchandise to Kalamazoo, move in some train other than the way-freight train?

A. The car operating-

Q. Now Witness, I want to stop you right there, and ask you to answer my question yes or no, first; and then you may qualify it.

Mr. EGGERS. He is trying to explain his answer as he goes along.
Mr. BARKELL. I appreciate that, but you can at least answer
that question yes or no, Mr. Witness, that particular type of
question; and then if you want to qualify your answer, or explain-

your answer, you will be permitted to do so.

Mr. Clarry. I do not object, Witness, to your adding to your answer whatever you think is necessary by way of explanation,

but please say yes or no, first, and then you may proceed.

The WITNESS. What is the question, now?

Mr. CLARDY. Read it.

(Question read.)
A. Yes; but—

Mr. BARKELL. Go ahead.

A. The car from Fort Wayne to Kalamazoo is not termed a way-car; it is a destination car.

By Mr. CLARDY:

Q. I did not term it a way-car-or if I did, it was unintentional.

A. All right.

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Q. I think that you read something into the question that was not there, in your anxiety.

A. I don't think so.

Q. Well, then, does the freight that is destined to Kalamazoo today move exactly as it is going to move in the future, even though this application is granted?

A. Practically all of it in the future will move as it is moving

today; yes, sir.

Q. Then, insofar as freight to Kalamazoo is concerned, there will be no saving in time if the application here is granted, will there!

A. On freight that moves in cars?

Q. Yes.

A. No.

Q. How often will there be any freight moving in a car destined to Kalamazoo?

A. Oh, I should say—I would estimate that there would be a shipment every day or so, possibly; small shipments or something like that.

Q. If it was only a small shipment, then it would move on the

local freight, would it not?

A. No, sir. It would move by truck, Willett truck.

Mr. CLARDY. You did not understand my question, then.

Mr. HARRY YOCKEY. I think the record is confused.

Exam. HARRISON, Yes.

Mr. CLARDY. All right, your Honor. Then I will start all over again.

By Mr. CLARDY:

Q. If there are small shipments to move by rail to Kalamazoo, that will not move exactly as they move today, will you handle those shipments on the local freight, or how will you get them there?

A. If we would have those small shipments today, they would be loaded into a destination car for Kalamazoo.

Q. Will that practice be changed?

A. Yes.

Q. How?

A. We would load them onto the truck.

Q. All right, Now, how many pounds of freight per day would that amount to?

A. Oh, I don't know; not a great deal.

Q. Well, when you say "not a great deal," do you mean something less than a couple of hundred pounds?

589 A. Well, I would say, less than 500 pounds.

Q. All right.

A. Generally speaking.

Q. Now, turn to applicant's exhibit No. 5 in this proceeding, if you will, please.

A. 5?

Q. Yes.

A. All right.

Q. The first item is: Fort Wayne to Kalamazoo?

A. Yes.

Q. Would you tell me now whether any of the tonnage which you have shown there is tonnage that will originate at Fort Wayne or points beyond, and move to Kalamazoo by rail—or rather, perhaps I should have expressed that in the past tense: did that represent such freight?

A. Yes, sir.

Q. How much?

A. There is approximately 1,000 pounds per day. I think I added in there about 1,000 pounds per day.

Q. From Fort Wayne to Kalamazoo?

A. Yes.

Q. And from Kalamazoo to local points also?

A. Yes, sir. There is some local tonnage in there, about 1,000

pounds, from Fort Wayne to Kalamazoo.

Q. Now, Witness, my next question is this: out of that total, in the first line, would you please tell me where the tonnage originated and where it moved to, on that part of the proposed operation?

A. (No answer.)

Q. I am not speaking about the future. Now understand me before you answer. I am speaking about the actual figure, because you told me that this was the December 1941 figure.

A. Yes.

Q. Now, I want to know the actual points of origin and destination that were involved in that tonnage figure.

A. I cannot say.

Q. Do you have any data here that will tell you that?

A. No, sir; I have not, and I did not have any when I worked this up, either.

Q. Well, is that same thing true with respect to all of the other figures shown on applicant's exhibit No. 5?

A. Yes.

Q. Then there is no present way in which we could tell whether a single pound of that freight originated at Kendallville, Indiana, for example, and moved to some point such as—well, let ussay, Vicksburg, or some other little town adjacent thereto, is there?

A. (No answer.)

Q. We could not tell that at all, could we?

A. From this statement?

591 Q. Yes.

A. No; you cannot.

Q. Do you have any information here available, then, Witness, that will enable us to find out that fact?

A. I cannot tell you the exact points that it went to, but I did make a study of the shipments originating along the route, that were transferred in interstate commerce.

Q. Where?

A. Along this route between Fort Wayne and Kalamazoo.

Q. That were transferred where, I say?

A. Well, it would be from Indiana to Michigan or from Michigan to Indiana, between Fort Wayne and Kalamazoo. Now, to state the point, I cannot tell you now what it was, but I did

make a study.

Q. All right. To save time, since in all probability you will be at any adjourned hearing that we may have in this matter, would you mind getting up for me the precise figures upon which you base the information that is set up on applicant's exhibit No. 5, to show from where and to where the movements were handled?

A. That would be an impossibility—or rather, I would not say that it would be an impossibility, either, but it would be impracticable for me to get you that information—.

Q. Well-

A. Because -

592 Q. You are not refusing to do it, are you?

A. For you; yes. Q. You will not do it?

A. For you I will not do it : no, sir.

Mr. CLARDY. Well, I will not take the time to inquire into your motive in that.

By Mr. CLARDY:

Q. Now, Witness, with respect to Kalamazoo, just so that we may be sure, however, you say that there may be about 1,000 pounds of freight either into or out of Kalamazoo, moving in interstate commerce, to or from some point between Kalamazoo and Fort Wayne, including Fort Wayne; is that correct?

A. (No answer.)

Q. In other words, about 1,000 pounds out of this total in the first line of applicant's exhibit No. 5 here, would deal with the Kalamazoo-Fort Wayne operation; is that correct?

A. Yes, sir.

Q. All right.

A. That is right, if I understand your question correctly, that is.

Q. All right. Now, with respect to the next line: would you know at the present time whether any of the movements included in that figure were movements from Fort Wayne, or points in Indiana, up to Grand Rapids and points intermediate between Kalamazoo and Grand Rapids?

593 A. Yes; it does include them.

Q. All right. Then my next question is this: can you give me a break-down of those figures, so that I may know where the movements originated, and where they went to?

A. No, sir; I cannot, because I didn't get these figures in a broken down condition myself. I got them from the total of the

month's business.

Q. Somebody handed you the figure, from your accounting department, is that correct?

A. I took it from the actual tonnage handled at the station.

Q. Well, I know, but that was in the form of a report that was sent to your accounting department, and which was in turn handed over to you, was it not?

A. Yes.

Q. So that you did not see then, did you, the original daily freight abstracts of freight received and forwarded, interline and local?

A. No, sir. They would not show that, anyway, if I had seen them.

Q. How is that?

A. I say, we do not show that on our abstracts.

Mr. CLARDY. Well, would you mind telling me now, whether or not you will get me that break-down.

Mr. HARRY YOCKEY: He said "No."

By Mr. CLARDY:

Q. Does that "No" apply to all of this?

594 A. Right.

Mr. Clardy. Well, I guess I cannot compel you to do it. The Witness. I guess you cannot.

By Mr. CLARDY:

Q. Now, Witness, I want you to refer for just a moment to applicant's exhibit 4.

A. All right.

Mr. HARRY YOCKEY. If the Board please, will you pardon me just a moment—may we be off the record?

Mr. BARKELL. Off the record.
(Discussion outside the record.)

Mr. BARKELL, Back on the record.

By Mr. CLARDY:

- Q. Do you have a copy of applicant's exhibit 4 before you there, Witness?
 - A. Yes.
 - Q. You made this up, as I understand it; is that correct?

A. Yes, sir.

Q. So as the author of it, you should know something about it, should you not?

A. I think I do.

Q. All right. Now, on the operation north out of Fort Wayne—and for convenience sake I wish you would have applicant's exhibit 2 in front of you also, to use in conjunction with the other exhibit.

A. All right.

Q. I want to refer you to a few specific points, just to highspot this thing, because you have talked in generalities during much of the time that you have been testifying here, and I want to be accurate now.

Mr. HARRY YOCKEY. Of course, the record will speak for itself, as to how the witness has talked.

Mr. BARKELL. Proceed.

By Mr. CLARDY:

Q. (continuing.) Now, let us take a point—well, let us take Fort Wayne to start with, and let us take a point north of Kalamazoo as the destination point. Take any town there that you want to name. Which one do you want to take?

A. Oh, it doesn't matter.

Q. All right. Let us take Plainwell, then.

A. All right. That is the first one.

Q. Yes. Now, let us suppose that a shipment coming from somewhere in the United States comes into Fort Wayne destined to Plainwell, Michigan. Would you please tell me now the physical manner in which that shipment will be handled from the moment that the car containing it enters the yard at Fort Wayne, clear up until the time it is delivered to the door of the consignee in Plainwell.

A. Well, that shipment would arrive in a car at Fort Wayne, and as I explained yesterday, go through the process of breaking up the train, and finally it would get into the Fort Wayne freight

house; and then the shipment would be transferred to a 596 car for Grand Rapids, Michigan, where it would be the next morning, and the truck leaving Grand Rapids would bring it back to Plainwell. Now, you understand—

Q. Just a moment.

Mr. Eggers. That is, in the proposed operation?

The WITNESS. Yes.

Mr. Eggens. Or under the proposed operation? The Witness. Yes.

By Mr. CLARDY:

Q. Let me just be sure, Witness, that we understand one another now.

A. That is one of them.

Q. Yes; I understand, but I want to ask you a few more ques-

tions about it as we go along.

A. Well; I would like to finish what I was saying, before you start to ask me another question. That is one operation. I have not quite finished my answer.

Mr. HARRY YOCKEY. Go ahead.

Mr. BARKELL, Yes.

Mr. EGGERS. Continue.

Mr. HARRY YOCKEY. Go right ahead, Mr. Christie. . .

A. I say, it would be loaded into a car to Grand Rapids, and brought back to Plainwell on the early morning truck—or on the morning truck, say. Another operation, if that particular ship, ment was in the Fort Wayne house before 9:30 o'clock in the

for Kalamazoo, which is scheduled to arrive there at 4 o'clock p. m., and it would make connection with a truck leaving Kalamazoo at 4 p. m., and go to Plainwell.

By Mr. CLARDY:

Q. All right. Now, let us take these operations up in their turn. In the first operation, what time actually at the present time does the freight arrive in Fort Wayne, destined for such towns as Plainwell?

A. Various times.

Q. Well, you know something about that from the train schedules, do you not?

A. Yes, sir. Our freight from the east arrives there during the night, at 12:30 a.m. From Chicago it arrives in there at 4:30 a.m.—I believe it is. We have way-cars that get in there late in the afternoon, at 4 o'clock p. m.

Q. That would be local freight coming from points within 100 o

or 200 miles of Fort Wayne, would it not?

A. Yes, sir.

Q. All'right, Now, let us assume that it is in one of these cars that you mentioned last, that get into Fort Wayne in the afternoon.

A. All right.

Q. Would it then be distributed over the dock of the railroad company, and loaded in a car destined for Grand Rapids?

A. In that case it may or it may not be. A car arriving at Fort Wayne, a peddlar car, at 4 o'clock in the afternoon,

598 will never get into the house that same day, but it will be in

the house the next morning.

Q. Then, if under the circumstances that we are now discussing, a piece of freight gets in on a Tuesday, we will say, in the afternoon, at 4 or 4:30 p. m., at Fort Wayne, destined for Plainwell, it will not be broken up and distributed until the next morning; is that right!

A. That is right; yes, sir. A car arriving at Fort Wayne at 4:30 in the afternoon would not, as I say, get into the house that day; we cannot get it into the house and work it that day.

Q. How late in the afternoon could it arrive, and you still be

able to get it into the house and work it that day?

A. Oh, I would say, around 2 o'clock.

Q. All right.

A. I mean, in the house by 2 o'clock.

Q. How?

A. In other words, I mean, the car would have to arrive there by noon, in order to get it in there that same day.

Q. I see.

A. It takes two or three hours.

Q. Well, then, anything that arrives up until noon will be worked that same day; is that correct?

A. Right.

Q. And anything that arrives after that time will not be worked until the following day?

599 A. That is right.

Q. All right. Now, we are going to assume it is a case where it is not worked until the following day.

A. All right.

Q. Would that freight then be loaded the next day into a freight car, or would it go by truck to Plainwell?

A. Truck.

Q. It would go by truck to Plainwell.

A. Yes.

Q. All right.

A. Anything which is unloaded would go by truck to Kalamazoo, and then be transferred to the other truck.

Q. All right. Now, despite the fact that you have one truck scheduled in at 4 p. m., and another truck scheduled out at 4 p. m., you will make that transfer instantaneously, and send the departing truck right on out, will you?

A. Well, you understand, do you not, Mr. Clardy—I believe you told me outside the record that you are an ex-railroad man.

Q. Yes; I am sorry to say, I am.

A. — when you make a schedule—and I guess it was force of habit in this schedule here also—what you term as the "rubber"

in the schedule is always on the final terminal end; and while that truck there is scheduled in there at 4 o'clock p. m., quite generally I think it will get in there at a quarter of four.

Q. All right. Now, let us see about that a little further. 600. Did you not also say that you set this schedule up to co-

ordinate entirely with your train schedules?

A. No.

Q. I understood you to say that.

A. No, sir.

Q. What did you say?

A. I said, with the train schedules and the truck schedules.

Q. All right. Is there any train connection that is supposed to make, or any train with which it is supposed to connect at 4 p. m., for departure toward Grand Rapids?

A. No, sir. That truck is supposed to connect with the truck leaving Kalamazoo at 4 p. m., even to the extent that the truck

might leave later, from Kalamazoo.

Q. I was just going to ask you that as my next question, witness. You will hold that truck over, if the other truck happens to be held up and is late getting into Kalamazoo, will you?

A. Reasonably late.

Q. Well, how late is reasonably late?

A. Oh, I would say, maybe an hour, or half an hour, or something like that. We want to get the truck into Grand Rapids by the time we close the freight house, which would be approximately between 7 and 8 o'clock.

Q. All right. Then, if the truck is more than 30 minutes to an hour late, there would not be any connection at Kalamazoo, would

there?

601

. A. No, sir.

Q. That is right, is it?

A. Right.

Q. All right. Now, let us take another instance. Let us suppose instead of taking that shipment to Plainwell, we are going to take it to a point north of Grand Rapids; as a matter of fact, we are going to go so far north that we are going over onto this route that runs off to the right up there, into Traverse City. Now, would you mind tracing such a shipment through for me!

A. From Fort Wayne?

Q. Yes.

A. A shipment from Fort Wayne-

Q. Now, Witness, this is the same shipment that gets in there at 4:30 in the afternoon—just so that we understand each other.

A. Yes.

Q. All right. How would that be handled?

A: A shipment received at 4:30 in the afternoon at Fort Wayne will be loaded into a car for Cadillac, Michigan.

Q. The next day?

A. That day.

Q. The same day?

A. Yes.

Q. I thought you told me just a moment ago here if a car got in there with a shipment for the north after noon, it would not be worked until the next day.

A. Well, now, I guess that you and I have gotten off the track

again, here.

Mr. BARKELL. That is the testimony that you have given, Mr. Witness, if I understood you correctly.

Mr. EGGERS. Yes.

The Witness. That is right, I did say that, too; but that was not my understanding of the last question. A shipment arriving at Fort Wayne, coming into the yard, we will say, at 4:30 in the afternoon, on a Monday—if that illustration is all right.

By Mr. CLARDY:

Q. All right.

A. —will be placed in the freight house on Tuesday, and will be transferred to a car that is destined to Cadillac, and it will be at Cadillac Wednesday afternoon at 3 p. m.

Q. Now, wait a minute.

A. You asked me; now, let me tell you, let me finish my answer. Mr. HARRY YOCKEY. Let him finish.

By Mr. CLARDY:

Q. Just so I will be able to follow you intelligently, Witness. You say it will leave Fort Wayne that day—

The WITNESS: He keeps interrupting me-

Mr. Clardy. I just want to be sure that I understand the witness correctly as he goes along.

The WITNESS. You do not let me finish my answer.

603 Mr. HARRY YOCKEY. Counsel keeps breaking in.

Mr. BARKELL. Let the witness finish his answer. Go ahead.

Mr. CLARDY. If I may, your Honor, I want to get this-

Mr. HARRY YOCKEY. Now, Mr. Clardy, let the witness finish his answer. I insist that you permit the witness to finish his answer.

Mr. Clarry. If counsel has any objection to make, let him make

breaking in on the witness, when he is trying to answer one of counsel's questions. Give the witness a chance to complete his answer.

Mr. CLARDY. Now, your Honors, I submit that I have a perfect right to do what I am doing. I merely want the witness to give me the exact departure time as he goes along, out of each point, so that I can intelligently follow the thing through with him.

Mr. BARKELL. All right.

By Mr. CLARDY:

Q. Now, Witness, will you give me the departure time out of Fort Wayne?

A. Well, now, I am not just sure where we left off, so maybe

we had better start all over again.

Q. Fine!

A. All right. This car arrives at Fort Wayne, in the yard, at 4:30 in the afternoon, on Monday.

Q. Right.

A. That car will be placed in the Fort Wayne freight house Tuesday morning.

Q. All right.

By Mr. EGGERS:

Q. Right there; let me ask you: About what time?

A. Between midnight and six o'clock.

Q. Would it be in there by nine o'clock?

605 A. Oh, yes.

Q. The next morning?

A. Yes.

Mr. EGGERS. Continue.

A. It will be placed in the Fort Wayne freight station Tuesday morning. That shipment will be transferred on Tuesday into a car that is destined for Cadillac, Michigan. The car will be switched from the Fort Wayne freight house on Tuesday at approximately seven or eight o'clock.

By Mr. EGGERS:

Q. At night?

A. At night, yes, sir; and will depart from Fort Wayne in a train at 12:25 a.m.

Q. That would be Wednesday morning.

A. Yes, sir. I will be in Grand Rapids at 7:30 a.m. Wednesday morning. Then another train will take that car, that departs from Grand Rapids at 10:00 a.m. Wednesday morning, and the car will be in Cadillac at 3:00 o'clock p.m. Wednesday afternoon; and the truck will depart from Cadillac with that shipment at 4:00 p.m. Wednesday afternoon, and it will be in Traverse City at 8:00 o'clock Wednesday.

By Mr. CLARDY:

Q. In the evening?

A. Right.

Q. And be delivered in the normal course of business, Thursday morning?

A. Yes, sir.

606 Q. All right. Now at the present time if you have a shipment that is scheduled for the same point; that is, Traverse City, how would it get there?

A. A shipment arriving in the Fort Wayne yard at 4:00 p.m. on Monday, would be placed in the Fort Wayne house on Tuesday, and be transferred into a car for Grand Rapids, Michigan.

Q. Well, then, it would get up to Grand Rapids at the time that you just outlined, would it not?

A. Let me explain that a little further, please.

Mr. BARKELL. Go ahead.

A. You keep interrupting me, and compel me to go back.

Mr. CLARDY. I am sorry.

The WITNESS. I am trying to figure out this schedule, and be accurate in what I say, and listen to you too.

Mr. CLARDY. I am sorry. Mr. BARKELL. Go ahead.

A. A shipment arriving in a car at Fort Wayne at 4:00 p. m. on Monday, will be in the Fort Wayne freight house on Tuesday morning.

By Mr. CLARDY:

Q. All right.

A. It will be transferred and forwarded in a car from Fort Wayne to Grand Rapids, leaving at 12:25 a. m. Wednesday. It will arrive at Grand Rapids at 7:30 a. m. Wednesday, and will be transferred in the Grand Rapids freight house Wednesday, into a car peddling freight on the Traverse City branch; and will

depart from Grand Rapids Thursday at 10:00 a. m., ar-607 riving at Cadillac at 3:00 p. m. on Thursday, and depart-

ing from Cadillac on Friday, on the local, at 11:00 a. m.—or rather, 11:00 a. m. to 12:00; and get into Traverse City on Thursday night—or rather, Thursday afternoon, late, and probably be delivered on Friday.

Q. All right.

A. Now I think I have covered it.

Q. Supposing you started it out of Fort Wayne on Tuesday. It would get in there 24 hours earlier than this schedule, would it not?

A. No, sir; it would be 24 hours later.

- Q. Well, now, you are running an every other day service north of Grand Rapids, are you not?
 - A. Where to?

Q. North.

A. Well, can you be a little bit more specific?

Q. To the point that we are talking about.

A. Traverse City?

Q. Up that way.

A. We have got one train from Grand Rapids to Traverse City.

- · Q. Do you run a train up to Cadillac, or do you make it up at Cadillac?
 - A. We run a daily train to Cadillac.

Q. All right. Now let us start over.

A. All right.

Q. If this shipment gets into Grand Rapids—let us assume that it would get in there on the day you suggested, which is a day later than you were talking about before.

A. All right.

Q. If it did that, on that day, then it would not have to lie over, as you have indicated, before it left Grand Rapids, would it?

A. That would be an additional day that it would lay over.

Q. If it got in there on another day?

A. Yes.

Q. On what days do you run your train north out of Grand Rapids?

A. Daily.

Q. Every day?

A. Yes, sir.

Q. Where is the every other day service that you mentioned earlier in your testimony here?

A. Between Cadillac and Traverse City.

Q. Oh. All right. Well, then, let us suppose, as we discussed a moment ago here, that it gets into Cadillac on a day later schedule than we were talking about. Then it would not lie over 24 hours, before it went out, would it?

A. Yes.

- Q. Just the same?
- A. Yes, sir.
- Q. Regardless?
 - A. It would be delayed an additional day; yes.

609 Q. Why?

A. Well, because this train from Grand Rapids gets into Cadillac at 3:00 o'clock p. m., and your Traverse City train leaves at 11:00 o'clock a: m., which makes one-day lay-over. Now,

if the local does not run the next day, then there would be two

days for it to lay over. .

Q. All right. Now, have you checked the operating schedule of any carrier running out of Fort Wayne, that can operate all the way up to Traverse City?

A. Do you mean motor carrier?

Q. Yes.

A. No.

Q. Would you have the slightest idea as to what service they could give, in a through operation, an operation all the way through?

A. I wouldn't have the slightest idea.

Q. You never checked that?

A. No. sir.

Q. Or made any investigation?

A. None whatsoever.

Q. And you do not intend to make any?

A. No.

Q. Now let us take a shipment starting out at Kendallville, Indiana, that is destined to the same point we have been talking about—

610 Mr. HARRY YOCKEY, Petoskey?

Mr. CLARDY. No; Traverse City.

The WITNESS. Traverse City.

By Mr. CLARDY:

Q. Would that shipment move out of Kendallville by rail at the present time?

A. Yes.

Q. Directly north, or would it go back to Fort Wayne?

A. Well, it might move in either direction.

Q. You might have the way-freight going south pick it up and bring it up into Fort Wayne, shuffle it there, and send it out the next day; is that right?

A. There might be a way-freight pick it up and take it north to Kalamazoo, and then to Grand Rapids. It could move, and possibly would move either way.

Q. Would you make any change in that part of the operation if this application were to be granted?

A. In the method of handling?

Q. Yes.

A. Oh, yes.

Q. How would that be?

A. We would bring that shipment from Kendallville down to-Fort Wayne, and load it into a car for Cadillac, and then take it outQ. The change would be at the other end, by the use of the truck there, would it?

A. No, sir; it would be at the south end also at Kendallville. We would pick the shipment up by truck at Kendallville.

Q. Well, now, let us see. You would pick that up by truck

at Kendallville, you say.

A. Yes.

Q. And bring it into Fort Wayne?

A. Yes, sir.

Q. And then start it out of there by train?

A. Yes, sir.

Q. Well, if that is the case, if the shipment were not available before—oh, say, between two and three o'clock in the afternoon, it would have to wait until the next day before it could even get started on its journey, would it not?

A. If it was not available at the time the last truck left there,

it would have to lay over until the next day; yes, sir.

Q. And what time, if you know, would the last truck be available in Kendallville?

A. Oh, 2; 15 p. m.

Q. So that anything that was offered after 2:15 p. m. would remain there 24 hours before it was picked up under the proposed new scheme, would it not?

A. Well, it would remain there until the next day. It could

be picked up in the morning of the next day.

Q. Well, I think perhaps you are right, but it would still be another calendar day, would it not?

612 A. Yes, sir.

Q. To shorten it up, if we take any of the towns that have been named along this route north of Fort Wayne, intermediate between there and Kalamazoo, the same situation would prevail, would it not?

A. Yes.

Q. The only difference being that if it was at some of these other points, it would have to be picked up even earlier than 2:15 p. m. in order to get moving that same day, would it not?

A. I wouldn't agree to that; no, sir; in any such general way.

Q. Well-

A. Give me a specific point.

Q. All right.

A. And I will try to answer it.

Q. All right. I will give it to you, with your help. Will you tell me the name of another town in Indiana, north of Kendallville, between there and the Michigan-Indiana Stateline?

A. Lagrange.

Q. Lagrange.

A. Yes.

Q. All right. Now what time would the truck pick up at Lagrange, if it was going to take a shipment into one of the Michigan points that you have been discussing?

A. Well, the latest time of the day would be 12:45 p. m.,

Eastern Standard time.

613. Q. All right. Then if the truck-

A. Well, now, wait a minute. Let me correct that. I-mean, Central Standard time.

Q. O. K.

A. Central Standard time.

Q. I thought you were confused as to the illustration.

A. No, sir. On the schedule, I have changed the schedules of the trucks from Central Standard time to Eastern Standard time, that was why.

Q. Do not get it confused with this war time, now.

A. No. We use Central Standard time, and Eastern Standard time.

Q. All right. Any shipment that would be offered you after that hour, then, would remain in the town until the next day, before it started on its journey. That is right, is it not?

A. Yes, sir; just the same as it does now.

Q. Well, if freight is offered to you at an hour after twelvesomething at Lagrange today, do you not have a way-freight that operates through that town later than that hour?

A. Well, now, our freight trains—or rather, I mean to say our time-tables do not schedule a way-freight at that town at

that time. Perhaps you do not understand-

Q. I am perfectly familiar with the way it is handled.

A. However, I can give you the information exactly.

Q. Well, you can answer the question this way—
A. Just a moment, please, now. I am going to try and
figure out something for you.

· Q. I want to help you.

A. Well, you are not helping me at all, when you keep interrupting me. You are just disturbing me.

Q. All right.

A. Well, now, we have a way-freight leaving Fort Wayne at. 12:01 p. m., that would possibly get to Lagrange at about—oh, I would say possibly around eight o'clock at night.

Q. And if there were a shipment tendered to your station agent at that town at any time up until eight o'clock at night, it

would be loaded into that way-freight, would it not?

A. For where?

Q. To the north.

A. Yes, sir; it would be toaded into the way-car for Kalamazoo.

Q. Well, now, Witness, we are just starting this shipment out on its journey to these upper Michigan points that we have been discussing here.

A. All right.

- Q. The shipment would leave the town, at the present time, on the same day on which it was tendered, would it not?
 - A. Yes.
- Q. But if it was tendered in the afternoon, hereafter, when this motor carrier service is in effect, it would not leave town until the next day, would it?

A. That is correct.

Q. All right. Now would not that same condition exist at most of the towns, all the way along this route?

A. Well, I wouldn't say that it would exist in most of them, no, sir, because there is a good part of these towns, that are going to be late in the afternoon.

Q. Well, now-

A. (Continuing.) But there is such a condition exists at all-

or practically all of the points, I will say.

Q. All right, sir. Now, then, on your operation out of Fort Wayne up to Kalamazoo and Grand Rapids: Do you have any motor carrier competition at the present time?

Mr. HARRY YOCKEY. Just a moment. Whom do you mean by

"you," now? .

Mr. CLARDY. How?

Mr. HARRY YOCKEY. Whom do you mean by "you"?

Mr. CLARDY. You said that he was representing the railroad.

Mr. HARRY YOCKEY. All right.

Mr. CLARDY. He has not changed, that I know of.

Mr. BARKELL, Answer the question.

A. Well, I presume that we have; yes, sir. To name you any specific ones, I wouldn't be able to do that; but I assume that there are many trucklines operating between Fort Wayne and Kalamazoo.

By Mr. CLARDY:

Q. And are any of those trucklines endeavoring to get freight from the same people that you serve?

616 A. I assume that they all are.

Q. Do you have any knowledge about the competitive situation there?

A. No.

Q. Have you ever made an investigation-

A. No:

Q. — to discover that?

A. No. sir.

Q. So that you are entirely innocent of first-hand knowledge

here today, are you?

A. Yes, sir; that is correct. I have not made any investigation whatever of any motor carriers along any of these seven routes, and I have no desire to, and I do not intend to.

Q. Then so far as you know, if you could secure the service of an independent motor carrier, to furnish the service which is here proposed, you would not know whether that would in any way affect your business, or your operation, at all, would you!

A. Well, assuming-

Q. No, Witness; I do not want you to assume anything now have asked you a direct question.

A. You said "If."

Q. I say, I do not want any assumption, now.

A. But you said: If we did.

Mr. BARKELL. Read the question, please.

(Question read.)

By Mr. CLARDY:

Q. Can you answer the question?

A. You say in your question, if we were to do it; and on that' assumption, if we were, I would make an investigation-

Mr. CLARDY. Now, Mr. Reporter, will you go back and read my question once more to the witness, please, and I will ask the witness to answer the question.

(Question again read.)

A. I don't know what you mean by that.

Mr. BARKELL. 1 think, Mr. Witness, that the question is very explicit. Counsel first asked you if you had made any investigation of any of these independent carriers, and the is asking you now, if I understand the question correctly, if you entered into a contract with one of those independent trucking companies, would that affect your business in any way?

Mr. HARRY YOCKEY. The witness has already said, your Honor,

that he does not understand counsel's question.

Mr. Clardy. No: I have not heard him say that. I want him

to say, whether it will or not, or whether he knows or not.

The WITNESS. I just got through telling you that I did not know. what you are talking about, and I still do not know what you are talking about.

Mr. CLARDY. All right.

The WITNESS. Affect our business how?

Mr. CLARDY. I will explain what I have in mind to you, Witness, because I want a clear answer here.

The WITNESS. All right.

By Mr. CLARDY:

Q. We are supposing that, instead of this applicant getting the authority it is seeking here, it does not get it. Do you follow me so far?

A. All right.

Q. And that, under that circumstance, you seek out a motor carrier operating over these routes, and have that carrier perform exactly the same identical service. You follow me, do you?

A. Yes.

Q. All right. Now, then, my question is, in the present state of your knowledge, or lack of knowledge of the competitive situation, are you presently able to tell me whether the hiring of such independent carrier would in any way affect your business as a railroad between those points?

A. Well, I still do not know that I understand what you mean.

Do you mean, would it cause us to lose business?

Q. Would it affect your business in any way, either cause you to lose, or cause you to gain?

A. (No answer.)

Q. Or do you know?

A. No, sir; I don't know.

Q. Thank you. Now, you said, it a rather general fashion, something about savings in the operation that will be put in, but you did not go into any detail at all, and I want to ask you

this question, on a related subject: Will it not cost you something if you operate both the way-freight, as you have outlined it to me, and also operate the truck schedules that

you propose?

A. Why, I did not outline to you that we would operate any

way-freight cars. Peddler cars, do you mean?

Q. Let me reframe the question. If you operate your way-freight trains as you have outlined to me, and also obtain authorization to, and actually do, have The Willett Company serve you as is proposed in this application, will there not be some additional cost, because of the use of the trucks, to offset any claimed savings that you discussed in your previous testimony?

A. There will be a net saving-

Q. Well, now-

A. —to the railroad.

Q. Answer my question directly, please, Witness, Will there not be some additional expense that you do not presently have?

A. If the application is granted, we will have the expense of The Willett Company trucks which we do not have at the present time.

Q. All right.

A. That is true.

Q. Now, do you have with you here today any data, or any figures, that show in detail what that additional cost will be?

A. For The Willett Company trucks?

Q. Yes.

320 A. Around \$5,000.

Q. For what?

A. Per month.

Q. For the entire operation?

A. Approximately that, yes.

Q. Have you broken that down as to each of these operations, so that we can tell how much, for example, the additional cost of the truck operation would be between Fort Wayne and Kalamazoo, and each of the others in turn?

A. No, sir, I do not have that with me; but you can figure it.

Q. What?

A. I say, you can figure it out. I will give you the cost of the trucks, and you can figure it out.

Q. Do you have a copy of the contract here?

A. No.

Q. Does it set forth the matter in great detail?

A. Certainly.

Q. All right. Now with respect to the operation of the way-freight: That is the only train in connection with which you contend that there will be any reduction in working hours, is it not?

A Well no; I wouldn't say that, and I didn't testify to that.
You would not let me testify to it as I recall it.

Q. Well, I did not recall that I had been able to stop you as to anything, Witness.

621 A. However, there is an intangible saving there, on through freight.

Q. Well, now, let us confine ourselves to the way-freight proposition. At the present time are they operating, like most of them do, on about a 15- or 16-hour schedule?

A. (No answer.)

Q. Or rather, not schedule, but actual operating time, I mean to say.

A. No, sir; I wouldn't say that they are running that high.

Q. How high does it run?

A. Oh, maybe from an hour to three hours over-time per day, or something of that sort.

Q. And that would make the total time how much?

A. The total time?

Q. Yes-so that we will have it in the record here.

. A. Well, a day is normally eight hours, and it would run 10 or

11 hours, say, in some instances.

Q. Then do you want the Joint Board to understand, Witness, that in no instances and under no condition in the future, if this application is granted, there is ever going to be any overtime pay to any of the way-freight crews?

A, I certainly do not want them to understand that; no, sir.

Q. Thank you. Atothe present time is not your railroad in-

terlining freight with other railroads?

A. Well, now, when you refer to interlining freight, do you mean interchanging freight? Is that what I understand you to say?

Q. Perhaps they have changed the term since I worked on a

railroad. I assume they mean the same thing.

Exam. HARRISON. I think interchange is what you mean, Mr. Clardy.

A. Oh; we interchange freight; yes.

Mr. CLARDY. That may be correct, Mr. Examiner, but I prefer to use the term that I am familiar with, that I used to use.

Exam. HARRISON. That is perfectly all right, just so you do not get the wrong answer.

Mr. CLARDY. Pardon me, your Honor?

Exam HARRISON, I say, perhaps you had better use the other term, or you may get the wrong answer.

Mr. CLARDY. I think the record will be clear.

The WITNESS. Well, if you mean interchanging freight and billing freight through on foreign railroads, we do that; yes, sir.

By Mr. CLARDY:

Q. And you do it right along, do you not?

A. Oh, yes.

Q. And you do that with railroads with which you are in competition, do you not?

A. Why, yes, sir; I guess that they would be competitive with us, on some of it.

Q. And you have not refused to interline with those railformal roads that are keenly competitive with you, up until the present time, have you?

A. We never have, to my knowledge; no, sir.

Q. No. But you are going to draw the line here, when it comes to using a motor carrier that is competitive with you, are you?

A. Well, we have no authority to do it, and far be it from me to suggest doing anything for which there is no authority. I do not have any authority to authorize any such thing as that, and there has never been any authority issued that I know anything about,

to interchange freight under a fariff arrangement with a motor carrier; although there has been, as I say, with other railroads.

Q. Well, you do not know of any statutory enactment that forbids that, do you!

A. No.

624 Q. What you meant was that thus far your superiors just simply have not elected to do that; that is correct, is it not?

A. Well, I do not know of any law against it. If they desire to do it, I suppose they can do it; or if they desire not to do it, I

suppose they have the same right.

Q. Now, when you stated your figures with respect to a prospective saving, did you not have it mind the thought—or rather, did not you base those figures on the assumption that the figures which are set out on applicant's Exhibit No. 5 here would represent the average continuous monthly tonnage to be moved over these routes, if the application were granted!

A: No. sir.

Q. What figures were they that you had in mind, then, as to tonnage?

A. Well, I used an average figure of tonnage for the month of December, the tonnage for the month of December.

Q. 1941?

A. Yes.

Q. Well, then-

A. Let me finish:

Q All right.

A. Now, we all know that the tonnage into Mackinaw City, Petoskey, an points like that up there, is much heavier in the summer months than it is in the month of December so I would say.

therefore, that I expect this tonnage to be greater during the summer months than what I have shown on here.

Q. Well, my question was-

M. BARKELL Just a moment, please, Mr. Clardy. Off the record.

(Discussion outside the record.)

Mr. BARKELL. Back on the record.

By Mr. CLARDY:

Q. What I am trying to get at is this, Witness: in making your estimates here you have taken the figures from applicant's exhibit No. 5 for that particular month, and comparable figures reached in the same way, from the same source, for the other months of the year; that is correct, is it not?

A. No, sir. This is an estimated figure—or rather, this is for the month of December only, the tonnage handled by the

railroad for the month of December only.

Q. All right.

A. Now, then-

Q. Did you-pardon me. Go right ahead.

A. As I stated before, during the summer months I expect the tonnage will be greater.

Q. I understood you to say that.

A. Yes

Q. But as to the tonnage for the summer months—did you have some actual figures before you when you sat down to figure out the car-mile savings, and the other savings which you mentioned?

A. I figured the savings on the month of December.

Q. On the basis of the month of December?

A. Yes.

Q. Well, then, Witness, you misunderstood my first question. I again ask you, now, in all kindness, if you will produce all of the data from which applicant's exhibit No. 5 was compiled, so that I may examine you on it?

A: No, sir: I will not furnish it to you.

Mr. CLARDY. That is all I have.

Mr. BARKELL. Are there any further questions of this witness?

Mr. HARRY YOCKEY. May we have a recess for just a moment, your Honor. There may be just a few further questions.

Mr. BARKELL I would like to have Mr. Clardy finish up with his cross-examination before we recess.

Mr. CLARDY. I believe there will be only one further question that I would like to ask, your Honor. I will be very brief.

Mr. BARKELL. All right. Then we will take a short recess at this time.

(A short recess was taken.)

Mr. BARKELL. Come to order, please, gentlemen. I believe you have one other question, Mr. Clardy.

Mr. CLARDY. There are just one or two questions that I would like to ask.

Mr. BARKELL. One, or two?

Mr. CLARDY. Just one. I will promise you.

Mr. BARKELL. Just one?

Mr. CLARDY. Yes.

Mr. BARKELL. Very well.

627

. By Mr. CLARDY:

Q. Witness, would you—or rather, would the railroad company which you represent, under any circumstances avail itself of the service of any common motor arrier operating over the routes in question, or any part of them, even though that service might be equal to or better than that which is proposed by the applicant in this proceeding?

Mr. HARRY YCCKEY. Now, I want to object to that if the Board please. He has already gone into that.

Mr. CLARDY. No; I have not.

Mr. BARKELL I am not sure that that was covered on cross-examination. I think the witness may answer the question.

A. No, sir.

Mr. CLARDY. Thank you.

Mr. BARKELL. Have you any questions, Mr. King?

Mr. King. Yes, your Honor; just one or two.

By Mr. KING:

Q. Mr. Christie, I believe you have stated that shipments moving over these routes under this proposed application will move under the tariffs of The Pennsylvania Railroad; is that correct?

A. Yes.

Q. I note that in applicant's exhibit No. 8, which gives the mileage between certain points, in each case the truck mileages exceed the rail mileage.

A. Yes.

Q. Now, will the tariffs that are published for this proposed service be based on the rail mileage or the truck mileage?

A. Rail.

Q. On the rail mileage?

A. Yes.

Q. And without any reference to the actual truck mileage that is traveled by the trucks of the applicant?

A. The applicant will not be named in the tariff, and there will

not be anything about its trucks in the tariff.

Q. But the tariff will be based entirely on the rail mileage, you say?

A. Yes.

Q. Without any reference, or without any regard whatever to the actual truck mileage?

A. That is right.

Mr. King. That is all.

Mr. BARKELL. Have you any further questions of the witness, Mr. Yockey?

Mr. HARRY YOCKEY. Are there any further questions from the bench?

Mr. Eggers. I have just one.

By Mr. EGGERS;

Q. Mr. Christie, just to clear up this particular matter in my own mind, going back to one of the original questions di-

rected to you by Mr. Clardy: in the case of a movement originating at Fort Wayne, destined for Traverse City, would there be any difference between how that freight would arrive at

Cadillac, Michigan, under the proposed set-up, and the way it ar-

rives at Cadillac at the present time?

A. Yes, ar; there will be a difference, because we can load freight from Fort Wayne to Cadillac, which will be this truck freight, and the truck will get it out of the car, and truck it to the point north; whereas—

Q. Out of the car where?

A. At Cadillac.

Q. Oh.

A. Whereas, under the present conditions, under the present operation, why, we load that freight from Fort Wayne to Grand Rapids, and Grand-Rapids is a transfer station, a large transfer station, and there we transfer the freight into peddler cars at Grand Rapids, and send it on to wherever it is going.

Q. Well, now, I am not quite sure that that does clear up the question that I had in my mind. Under the proposed system, as you have outlined it, is it a fact that freight moving entirely by rail to Cadillac would arrive there sooner under the proposed

system, than it does at the present time?

A. Yes.

Q. That is correct, is it?

A. Yes, sir.

630 Q. Is there any particular reason for that?

A. Yes.

Q. What?

A. Because when we load it now to Grand Rapids—as I say, Grand Rapids is our transfer station, and Cadillac is not. It is not equipped to transfer freight, so we load it on Grand Rapids, and from there it is loaded into a way-car going up as far as Cadillac, and it is loaded into another way-car going up to the Traverse City branch, and another way-car up north of Cadillac; and those way-cars are handled on a through freight, two of them, up as far as Cadillac, and then they go on locals, while this one out of Grand Rapids, up as far as Cadillac would go on a local freight train. Now, by routing the freight from Fort Wayne to Cadillac, we would eliminate the transfer at Grand Rapids, and we would also eliminate the delay, due to the tri-weekly service that we have up in that territory north of Grand Rapids.

Q. Now, do you understand that I am only talking about getting

the freight into Cadillac?

A. (No answer.)

Q. How it leaves Cadillac for Traverse City, I am not interested, just at this moment.

A. I have been talking about that.

Q. Well-

A. I will confine myself to Cadillac, then.

631 Q. Yes. As I understand it, then, under the proposed system the freight will arrive in Cadillac by rail sooner, than it arrives under the present system, at the present time; is that correct?

A. Yes, sir.

Q. All right. Now, would you repeat once again, for my own information, please, why you cannot use that system at the present time to get the freight into Cadillac at that earlier time?

A. For the reason that at the present time we load all freight going north of Grand Rapids, on Grand Rapids, and Grand Rapids makes cars going to various points north—that is, way-

cars, I am speaking of now.

Q. Yes.

A. And we could not load the freight on Cadillac, because we are not equipped at Cadillac, as I stated before, that is, Cadillac is not equipped as a transfer station; and even though at the present time we loaded it on Cadillac, we would still have cars that would have to move out of Grand Rapids.

Mr. CLARDY. Well, now, your Honor, he has got me more con-

fused than ever.

Mr. BARKELL, Yes; I think the record is somewhat confused. Let us consider Cadillac as the destination point.

The WITNESS. Supposing we go off the record for a minute, and I will try to explain it to you and get it clear, and then

632 we can go back on the record.

Mr. BARKELL. That will probably save the Reporter a lot of unnecessary work.

Mr. EGGERS. All right.

(Discussion outside the record.)

Mr. BARKELL. Now, back on the record.

Mr. Eggers. Let me ask you one more question.

By Mr. EGGERS:

Q. Have you made a study, Mr. Christie, so that you would be able to tell us why it would not be practical for The Pennsylvania Railroad to have a certificate granted in this application which would have this old restriction in it—and when I refer to the "old restriction," I have in mind the restriction that is in some of the other certificates, that requires a prior or subsequent movement by rail?

A. Yes.

Q. You have made a study of that, have you?

A. I have made a study of that; yes, sir; and it will affect us.

Q. Would you be able to elaborate on that just a little bit. although not too much in detail? To what extent would it affect you?

A. It would amount to about one-half of one per cent.

Q. One-half of one per cent-

A. Of the traffic. Now, that is based on a three-day study, you understand.

633 Q. As I understand it, then, it would affect one-half of one per cent of the traffic—

A. Over the entire seven routes.

Q. Over the entire seven routes?

A. Yes.

Q. It would affect you to that extent if the Commission should put a restriction into the certificate, if this application is granted, requiring a prior or subsequent movement by rail?

A. Yes, sir.

Mr. Eggers. All right. Thank you. I believe that is all I have.

Mr. BARKELL. Now, Mr. Yockey, do you have any further questions of the witness?

Mr. HARRY YOCKEY. Nothing further.

Mr. BARKELL. You may be excused.

(Witness excused.)

Mr. BARKELL. Have you anything further at this time, Mr. Yockey?

Mr. HARRY YOCKEY. The applicant rests.

Mr. BARKELL. The Joint Board will entertain a motion, gentlemen.

Mr. HARRY YOCKEY. If the Board please, we would like to know what you have in mind with respect to going forward with the protestants' case. We would like to go ahead tonight, or in the morning.

Mr. BARKELL. We are getting to that matter right now, Mr. Yockey. The Board will entertain a motion at this time from any of counsel for protestants regarding proceeding further in this case at this time.

Mr. Anderson. I desire to move, if your Honor please, that this case be now continued, to be reset, at a time convenient to the members of the Joint Board and the Examiner of the Interstate Commerce Commission, and at a place to be fixed to give the protestants here an opportunity to prepare to put on their case, which we are not prepared to do at this time, principally because we did not know how long it would take to put in the case for the applicant. It has been suggested in our informal discussion of the matter, that the preferable place for holding the next hearing would be at Lansing, Michigan.

Mr. CLARDY. I would like to point out, if your Honors please, in support of that motion, that while we did enter into certain stipulations today, that saved a great deal of time, still it is now almost

5:30, and we have really put in two rather full days, especially in view of the fact that we started this hearing at 8:30 this morning. Therefore, while as I say we did expedite the hearing substantially by entering into those stipulations, nevertheless, it is obvious that it will have to go over. I understand that the Joint Board has no authority to reset a case for any definite time and place at this time.

635 Mr. BARKELL. No.

Mr. Clardy. We would like to ask, however, that the Joint Board and the Examiner indicate to the Commission our desire to have the matter reset at as early a date as possible, that will not conflict with other engagements of the Joint Board, the Examiner, or any of counsel.

Mr. BARKELL. Have you any comment, Mr. Yockey!

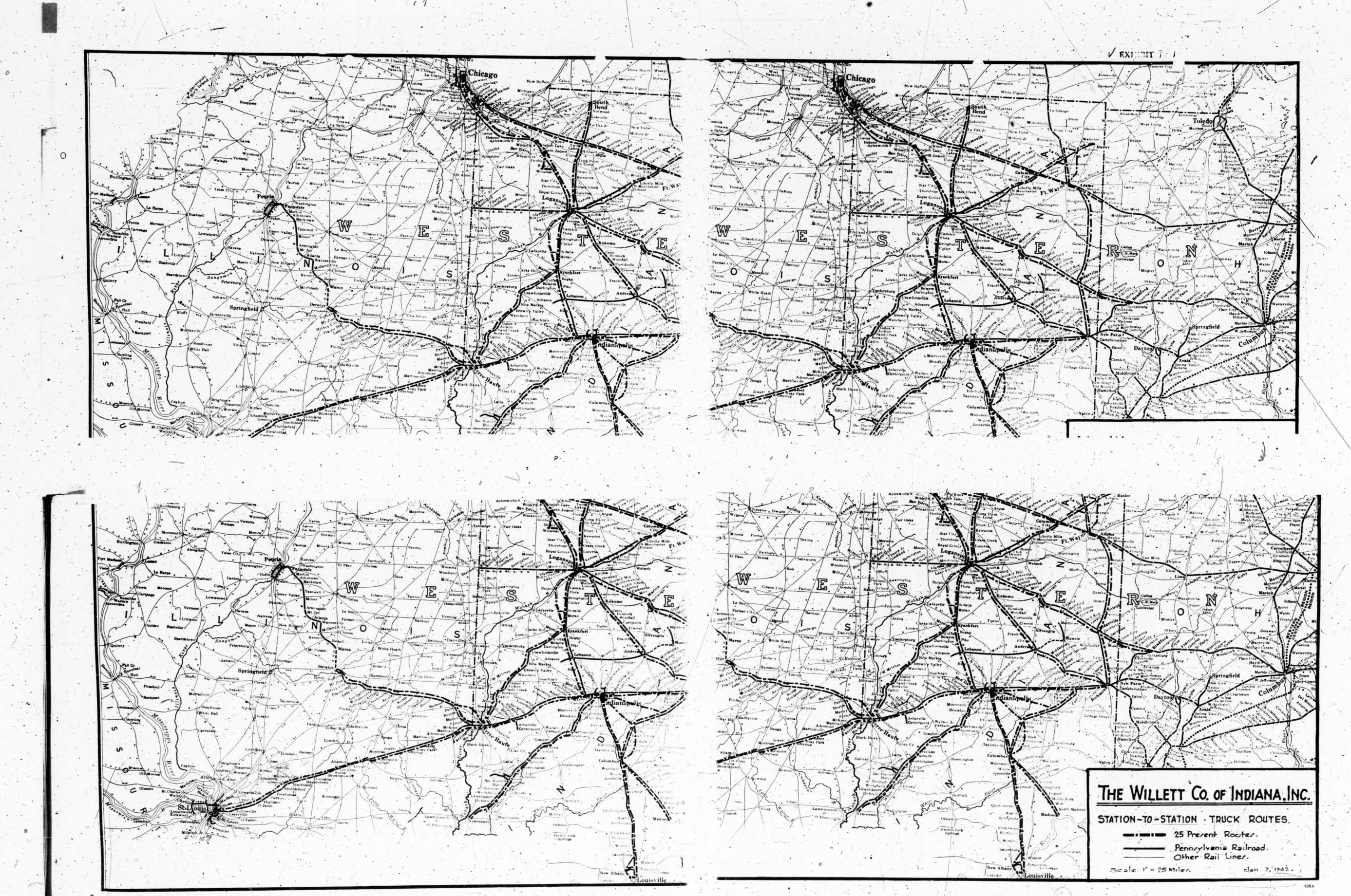
Mr. Harry Yockey. We naturally would have liked very much to have the case concluded at this particular time, but I am bound to say, and I know that my associates will agree with me, that all counsel are compelled from time to time to respect the desires or necessities of other counsel, and therefore, if these gentlemen, counsel for the protestants in this proceeding, are not prepared to go forward with their case at this time, why, we will not interpose any objection. As far as we are concerned, we were perfectly willing, and we expected to work tonight, and tomorrow, but since it now develops that these gentlemen are not ready to go ahead, that, of course, cannot be done. However, we would like to have the case set down for further hearing at the very earliest possible date, because it is most vital to us that we get this case concluded. We are anxious to get done with it, so we can get our certificate, and get this proposed operation into effect.

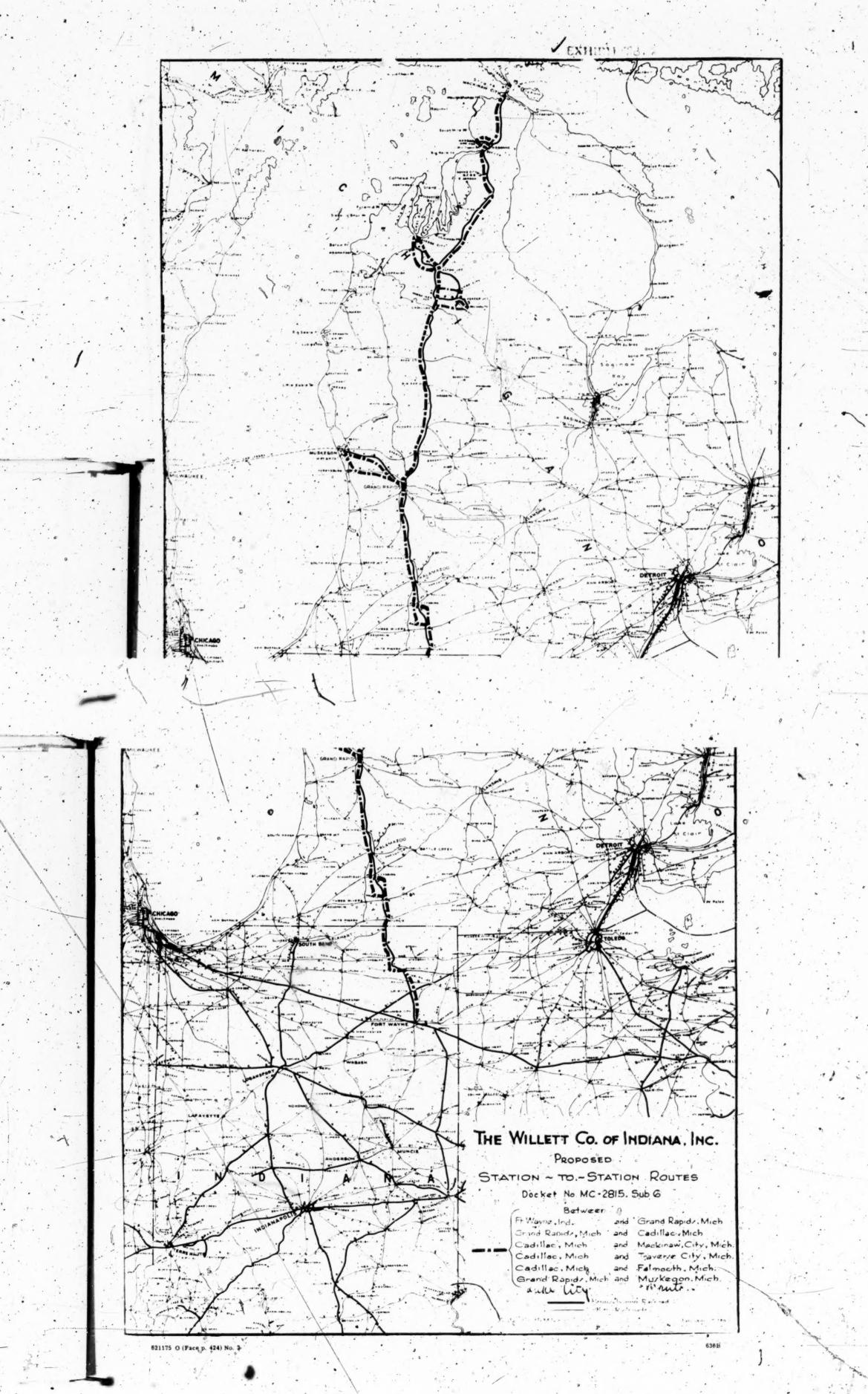
Mr. Barkers. The motion of counsel for protestants for an adjournment of this matter at this time, to a time and place 636 to be fixed by the Interstate Commerce Commission, is granted. You understand, of course, gentlemen, that the Joint Board members do not designate the time or place of an adjourned hearing. That will be for the Interstate Commerce

Commission.

Mr. Clardy. Thank you. We appreciate that.

(At 5:20 p. m., February 11, 1942, hearing adjourned to a time and place to be fixed by the Commission.)





636-C

Exhibit No. 3

MC 2815-Sub 6

THE WILLETT COMPANY OF INDIANA, INC., PRESENT ROUTES IN OPERATION

Routes covered by Grandfather Application MC 2815:
Logansport, Indiana, to Columbia City, Indiana.
Fort Wayne, Indiana, to Plymouth, Indiana.
Fort Wayne, Indiana, to Butler, Indiana.
Fort Wayne, Indiana, to Monroeville, Ind. (Ind.-Ohio State Line).

Routes covered by Application MC 2815 BMC 10: Columbus, Indiana, to Madison, Indiana. Effingham, Illinois, to East St. Louis, Illinois. Terre Haute, Indiana, to Effingham, Illinois. Indianapolis, Indiana, to Louisville, Kentucky. Indianapolis, Indiana, to Terre Haute, Indiana. Logansport, Indiana, to Union City, Indiana.

Routes covered by Application MC 2815 Sub 1:
Fort Wayne, Indiana, to Richmond, Indiana.
Logansport, Indiana, to Richmond, Indiana.
Indianapolis, Indiana, to Richmond, Indiana.
Columbus, Indiana, to Madison, Indiana (Mail and Express only).

Routes eovered by Application MC 2815 Sub 2: Indianapolis, Indiana, to Logansport, Indiana. Indianapolis, Indiana, to Vincennes, Indiana.

Routes covered by Application MC 2815 Sub 3: Union City, Indiana, to Bradford, Ohio.

Routes covered by Application MC 2815 Sub 4: Chicago, Illinois, to Logansport, Indiana. Chicago, Illinois, to Plymouth, Indiana. Terre Haute, Indiana, to Decatur, Illinois.

Routes covered by Application MC 2815 Sub 5:

Logansport, Indiana, to Effner, Indiana.

Logansport, Indiana, to South Bend, Indiana.

Terre Haute, Indiana, to Frankfort, Indiana.

Columbus, Indiana, to Cambridge City, Indiana.

Indianapolis, Indiana, to Shelbyville, Indiana.

Indianapolis, Indiana, to Rushville, Indiana.

Proposed routes covered by Application MC 2815 Sub 6: Fort Wayne, Indiana, to Grand Rapids, Michigan. Grand Rapids, Michigan, to Cadillac, Michigan. Cadillac, Michigan, to Mackinaw City, Michigan.

621175-45-28

Cadillac, Michigan, to Traverse City, Michigan. Cadillac, Michigan, to Falmouth, Michigan. Lake City, Michigan, to Manton, Michigan. Grand Rapids, Michigan, to Muskegon, Michigan.

636-D

Exhibit No. 4.

MC 2815-Sub 6.

THE WILLETT COMPANY OF INDIANA, INC.

Proposed Schedule of Routes in Hearing

Leave Ft. Wayne, Ind. 9:00 A. M., arrive Kalamazoo, Mich. 4:00 P. M.

Leave Kalamazoo, Mich. 11:00 A. M., arrive Ft. Wayne, Ind. 4:00 P. M.

Leave Kalamazoo, Mich. 4:00 P. M., arrive Grand Rapids, Mich. 7:15 P. M.

Leave Grand Rapids, Mich. 11:30 A. M., arrive Kalamazoo, Mich. 2:40 P. M.

Leave Grand Rapids, Mich. 11:30 A. M., arrive Cadillac, Mich. 5:30 P. M.

Leave Cadillac, Mich., 1:30 P. M., arrive Grand Rapids, Mich. 7:00 P. M.

Leave Grand Rapids, Mich. 11:30 A. M., arrive Muskegon, Mich. 2:00 P. M.

Leave Muskegon, Mich. 5:00 P. M., arrive Grand Rapids, Mich. 7:00 P. M.

Leave Traverse City, Mich. 12: 30 P. M., arrive Cadillac, Mich. 3:00 P. M.

Leave Cadillac, Mich. 4:00 P. M., arrive Traverse City, Mich. 8:00 P. M.

Leave Petoskey, Mich. 10:00 A. M., arrive Cadillac, Mich. 3:00 P. M.

Leave Cadillac, Mich. 4:00 P. M., arrive Petoskey, Mich. 9:30 P. M.

Leave Mackinaw City, Mich. 4:00 P. M. arrive Petoskey, Mich. 7:00 P. M.

Leave Petoskey, Mich., 10:00 P. M., arrive Mackinaw City, Mich. 1:00 A. M. 636-E

Exhibit No. 5

MC 2815-Sub 6

THE WILLETT COMPANY OF INDIANA, INC.

PENNSYLVANIA RAILROAD TONNAGE TO BE HANDLED BY APPLICANT

Rot		(tonnage) unds)
-	Fort Wayne, IndKalamazoo, Mich.	718, 770
	Grand Rapids, MichKalamazoo, Mich.	217, 100
	Grand Rapids, MichCadillac, Mich	854, 620
	Grand Rapids, MichMuskegon, Mich	831, 000
	Cadillac, MichTraverse City, Mich	280, 020
1	Cadillac, Mich. Petoskey, Mich.	225, 200
	Petoskey, MichMackinaw City, Mich.	273, 130
	Total 3,	400, 020

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THE WILLETT COMPANY OF INDIANA, INC.

Exhibit No. 6.

MC 2815-Sub. 6

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636-I

Exhibit No. 7

Application MC 2815 Sub No. 6 of

THE WILLETT COMPANY OF INDIANA, INC.

PROPOSED, ROUTES

· Between Fort Wayne, Indiana and Grand Rapids, Michigan: From Fort Wayne, over Indiana Highway 3 to Kendallville. Indiana, thence over U.S. Highway 6 to junction with Indiana Highway 9; thence over Indiana Highway 9 to junction with Michigan Highway 78 at the Indiana-Michigan State Line; thence over Michigan Highway 78 to junction with Michigan Highway * 86, near Nottawa; thence over Michigan Highway 86 to Nottawa; thence over County Roads, through Mendon and Vicksburg to junction with U. S. Highway 131 at Schoolcraft; thence over U. S. Highway 131 to Grand Rapids and return over the same route. Intermediate points to be served: Wallen, Huntertown, La Otto, Avilla Kendallville, Rome City, Wolcottville, LaGrange and Howe, all in Indiana, and Sturgis, Nottawa, Mendon, Vicks: burg, Kalamazoo, County Spur, Plainwell, Martin, Shelbyville, Wayland, and Moline, all in Michigan. No off-route points to be served. From Kendallville, Indiana, over County Road to Rome City, Indiana. No intermediate or off-route points to be served. From Nottawa, Michigan, over Michigan Highway 86 to Three Rivers; thence over U. S. Highway 131 to Schoolcraft. Michigan. No intermediate or off-route points to be served.

Between Grand Rapids, Michigan, and Cadillac, Michigan: From Grand Rapids over U. S. Highway 131 to Cadillac and return over the same route. Intermediate points to be served: Rockford, Cedar Springs, Sand Lake, Pierson, Howard City, Morley, Stanwood, Big Rapids, Paris, Reed City, Orono, Ashton, and LeRoy, Michigan. Off-route point to be served: Tustin. From Grand Rapids over County Roads, through Comstock Park and Belmont to junction with U. S. Highway 131 north of Grand Rapids. Intermediate points to be served: Belmont. No off-

route points to be served.

636-J Between Cadillac, Michigan, and Macknaw City, Michigan: From Cadillac over U. S. Highway 131 to Petoskey, thence over U. S. Highway 31 to Mackinaw City, and return over the same route. Intermediate points to be served: Manton, Fife-Lake, Kalkaska, Antrim, Mancelona, Alba, Boyne Falls, Petoskey, Bay View, Conway, Oden, Alanson, Brutus, Pellston, Levering, and Carp Lake, Michigan. Off-route points to be served: South Boardman, Elmira, and Walloon Lake. From the Junc-

tion of U. S. Highway 31 and Michigan Highway 131 near Kegomic, thence over Michigan Highway 131 to Harbor Springs, thence over said Highway and county roads to Conway. Intermediate points to be served: Kegomic, Wequetonsing, and Harbor

Springs.

Between Cadillac, Michigan, and Traverse City, Michigan: From Cadillac over U. S. Highway 131 to Walton, thence over county roads to Summit City, thence over County Road to junetion with Michigan Highway 113, thence over Michigan Highway 113 to Kingsley, thence over County Road 611 to Mayfield and return over the same route to Kingsley, thence over Michigan Highway 113 to junction with Michigan Highway 37, thence over Michigan Highway 37 to the junction with U. S. Highway 31, thence over U.S. Highway 31 to Traverse City, and return over Intermediate points to be served: Manton, Walthe same route. ton, Summit City, Kingsley, and Mayfield. No off-route points to be served. From Walton over Michigan Highway 113 to junction with Michigan Highway 37, thence over Michigan Highway .37 to junction with U.S. Highway 31, thence over U.S. Highway 31 to Traverse City. No intermediate or off-route points to be served.

Between Cadillac, Michigan, and Falmouth, Michigan: From Cadillac over Michigan Highway 55 to Lake City, thence over said Highway and county roads to Falmouth, and return over the same route. Intermediate point to be served: Lake City. No off-route points to be served. From Cadillac, over Michigan Highway 55 and County Roads, through Lucas to Falmouth. No

intermediate or off-route points to be served.

636-K Between Grand Rapids, Michigan, and Muskegon, Michigan: From Grand Rapids over U.S. Highway 16 to Coopersville, thence over County Roads, through Conklin, Ravenna, and Sullivan to junction with Michigan Highway 46, thence over Michigan Highway 46 to junction with U.S. Highway 31, thence over U.S. Highway 31 to Muskegon, and return over the same route. Intermediate points to be served: Ravenna and Conklin. No off-route points to be served. From Grand Rapids to Muskegon over U.S. Highway 16. No intermediate or off-route points to be served.

Between Lake City, Michigan, and Manton, Michigan: From Lake City over Michigan Highway 66 to its junction with Michigan Highway 42, thence over Michigan Highway 42 to Manton and return over the same route. No intermediate points to be served. No off-route points to be served.

636-L

Exhibit No. 8

MC 2815-Sub 6

THE WILLETT COMPANY OF INDIANA, INC.

Highway Mileage on Proposed Routes as Compared to Rail Mileage

	Rot	ate		Truc		ail eage
ort Wayne, IndKahn		h			10. 1	93.4
rand Rapids, MichCr	adillac, Mich.	via V aba Cita	nd Palmonth		05.6	97.
adillac, Mich. Travers	e City, Mich,	VIR LIBRE CITY BI	nd r smnonth		53.5	30.

636-M

Exhibit No. 9

MC 2815-Sub 6

THE WILLETT COMPANY OF INDIANA, INC. EQUIPMENT LIST

nit no.		. Make	Year	Car	pacity .
608	GMC	•	1935		13% tons
616	International.		1937		13a tons
617	International		1937		112 tons
18	International		1 1000		134 tons
1	International		1940		112 tons
	International		1940		132 tons
			1940		115 tons
5	'GMC				115 tons
6	GMC		1940		134 tons
7	International				112 tons
8	International		1940		139 tons
9	International		1940		the tons
0	Chevrolet				11/2 tons
1	Chevrolet		1940		114 tons
2.	Chevrolet		1941		132 tons.
3					119 tons
	GMC				113 tons
ĺ	QMC				11% tons
- 1	GMC				175 tons
1	GMC				1 g tons
	International			2.34	112 tons
5	International			3.	134 tors
М	International		1941		114 tona
-	International				114 tons
68	International				tis tons
10					114 tons
	GMC				11/2 tons
1	GMC		1941		Lis tons
3	UM Cassassassassassassassassassassassassass				13 tons
	GMC		1961		114 tons
9				1	11/2 tons
1	OMC			. (.	13 tons
	OMC		3043	-	135 tons
82 83	GMC		1044		139 tons
184	GMC.		****	1	134 tons
NAS I	GMC.		1941		the tons
86	GMC.				112 tons
87	OMC.		1941		142 tons
RR I	GMC.			1	Da tons
190	OMC	······	1941		136 tons

636-O

Exhibit No. 10

MC 2815-Sub 6

THE WILLETT COMPANY OF INDIANA, INC., EQUIPMENT LIST

TRAILERS

354			
	GMC	1935	3 tons
-355	GMC		a tons
368	Trailmobile		· 5 tons
360	Trailmobile	1937	5 tons
370	Trailmobile Trailmobile	1932	5 tons
371	Trailmobile	1987	5 tons
372	Trailmobile	1937	5 tons
373	Trailmobile		5 tons
374	Trailmobile		. 5 tons
375	Trailmobile		5 tons
376	Trailmobile		5 tons
377	Trailmobile		5 tons
378	Trailmobile	1940	5 tons
379	Trailmobile.	1940	. Stons
380	Trailmobile	1940	5 tens
. 381			5 tons
382	Trailmobile.	1940	5 tons
383	Trailmobile	1941	
. 384			5,tons
385			5 tons
386			5 tons
387		1941	ě tons
	Trailmobile	. 1941	5 tons
388 -	Trailmobile	1941	5 tons
389	Trailmobile	1941	3 tons
	Trailmobile		.5 tons
391	Trailmobile		. 5 tons
392	Trailmobile	. 1941 "	5 tons
393	Tgailmobile	1941	. 5 tons
294	· I raumonije	J. 1941	5.tons
5-P 308	-GMC-	1935	'3 tons
.396	Kingham	1941	5 tons
397	Kingham	1941	5 tons
396	Kingham	1941	. 5 tons
399	Kingham	1941	. 5 tons
400	Kingham	1941	5 tons
401	Kingham	. 1941	5 tons
402	Kingham		5 tons
409	Kingham	1941	5 tons
-:404	Kingham	1941	5 tons
405	Kingham.	1941	5 tons
. 406	Kingham	1941	. 5 tons
.407	Kingham		5 tons
408	Kingham	1941	5 tons

Exhibit No. 11

MC 2815—Sub 6

THE WILLETT COMPANY OF INDIANA, INC.

Expiration	71/42. Continuous. 7/1/42. 7/1/42. 7/1/42. 1/1/43. 7/1/42. Continuous.
Cargo linits E.	81.2 000 00 Co 771 26/75,000 00 Co 771 28/75,000 00 Co 28/75,000,00 Co
P D. limits	8, 600 00 1, 600 8 1, 600 8 1, 600 8 8, 600 9 8,
P. L. limits	\$5 10/1000 00 5/10,000 00 5/10,000 00 5/15,000 00 5/10,000 00
Policy No.	1 JF 79 1 MT - 88574 27 JF 30 1 MT - 88574 34 JS 77 34 JS 77 34 JS 77 18 JS
Insurer	Aetma Standard Aetma Aetma Standard Aetma Aetma Standard
erage	
Kind of coverage	P. L. & P. D. P. P. C. & P. D. P.
Filed with	L. C. C. Hitmote & Indianie Indianie Kentucky ! Ohio Michigan

No cargo required in Illinois on Interstate & Line Haul Operations.

Cargo certificate filed under Standard Fire Insurance Co. Policy IMT-55534 on Feb. 20, 1940.

636-R

Exhibit No. 12

THE WILLETT COMPANY OF INDIANA, INC.

303 West Polk Street

GENERAL BALANCE SHEET STATEMENTS

	December 31, 1939	December 31, 1940	December 31, 1941
ASSETS			
Current assets:			1
Cash Temporary cash investments	\$27, 024, 20	\$28, 261, 27	\$13, 068. 44
Temporary cash investments	25, 000.00		
Special deposits (insurance)	430,00	.480.00	420.60
Accounts receivable	5, 880. 39	10, 959, 51	27; 435, 53
Interest and dividends received	500, 01	1, 018, 76	
Materials and supplies	214. 29	617: 16	8, 131, 76
Total current assets	. 59, 048, 89	41, 286, 70	49, 055, 73
All the second s		The state of the s	
Tangible property: Revenue equipment-tractors and trailers	6, 779, 46	27, 464, 20	116, 894, 96
Revenue equipment-tractors and trailers		27, 404, 20	83, 95
Shop and garage equipment Furniture and office equipment	420, 38	470.30	429.00
Improvements to leasehold property	920, 00	433, 73	439, 45
Improvements to wasenoid property		966, 43	. 900, 90
Total tangible property	7, 199, 84	28, 368, 23	*. 117,847.26
Intangible property:		1	
Organization and franchises	1, 248, 73	- 745.74	352 12
investments securities and advances:	1,040,10	1.40.14	19174. 14
Bonds (U. S. Baby Bonds)	15,000,00	22, 700, 00	
Role A R R II	10, 100		
Prepayments (insurance, license and tires)	2:004.32	- 3:110.87	8, 770, 76
		96 6 8 8 8 8 8 8	1
Total assets	86,501,78	90, 211 '54	176, 025, 87
	for any desire		
LIABILITIES			2
Current liabilities:	11 - 3 / - 1		*
Accounts payable	1, 307. 07	2, 603, 28	55, 848, 53
Wages payable	112.43	519, 80	1, 364, 10
Taxes accrued	. 3, 114:07	5, 307, 11	7, 789, 85
Accured insurance	1, 01614	2, 330, 84	: 7,000.52
· Other current liabilities	30,00.	45. 60	
Total current liabilities	. 5, 579. 81	10, 806, 03	72, 003, 30
Contabatant '			
Capital stock	*** *** ***	70 000 00	20.000.00
Common Capital Stock	70,000.00	70, 000.00	70, 000.00
Chappropriated surplus: Earned surplus	8, 921, 97	15, 405, 51	. 34, 022, 87
Earned surplus	8, 921.97	10, 400. 51	. 34, 022, 87
Total liabilities	84, 501, 78	96, 211: 54	176, 025, 87
t view institution and a second	O4, 001. (0 ,	DO, 211. 04	110,000.01

436 I. C. C. ET AL. VS. HARRY A. PARKER ET AL.

636-S THE WILLETT COMPANY OF INDIANA, INC. 323 West Polk Street, Chicago, Illinois INCOME STATEMENTS

	Year 1939	Year 1940	Year 1911
Carrier operating revenue:			٠
Operating revenues	* \$71,000.00	\$131, 851, 56	\$220, 563, 96
Expenses: Operating and maintenance Depreciation and amortization Operating taxes and licenses Operating refus—Net Inferest deductions	47, 151, 53 3, 470, 68 4, 747, 99 927, 90	\$4, 898, 56 9, 665, 55 11, 959, 88 4, 675, 94	151, 864, 60 16, 458, 50 18, 119, 76 8, 215, 86 588, 66
Total expenses	56, 298, 10	11, 200, 93	195, 306. 10
Net operating revenue.	14, 701. 90	20, 650. 63	25, 845, 80
Other income: Interest income	822. 93	968. 75	
Gross income	15, 524: 83 3, 062: 15	21, 619, 38 3, 935, 84	25, 257, 80 6, 321, 68
Net income transferred to surplus	12, 462. 68	17, 683. 54	18, 936, 12
Other income: Interest income Gross income Provision for income taxes	822. 93 15, 524. 83 3, 062. 15	968. 75 21, 619. 38 3, 935. 84	25, 6,

636-T THE WILLETT COMPANY OF INDIANA, INC. 323 West Polk Street, Chicago, Illinois SURPLUS ACCOUNTS

	Year 1939	Year 1940	Year 1941
Credits: " Earned surplus at beginning. Surplus credits applicable to prior years. Credit balance transferred from income account.	\$7, 769, 38 36, 63 12, 462, 68	\$8, 921, 97 17, 683, 54	\$15, 405, 51 18, 936, 12
Total credits	. 20, 268, 69	26, 605, 51	34, 341, 63
Debits: Surplus debits applicable to prior years Dividends paid Other debits to surplus	146. 72 11, 200. 00	11, 200, 00	318.76
Total debits	11, 346, 72	11, 200, 00	318.76
Earned surplus at end of period	8, 921, 97	15, 405. 51	34, 022087

636-W

Exhibit No. 13

RE APPLICATION MC 2815 SUB No. 6 OF THE WILLETT COMPANY OF INDIANA, INC.

The restrictions in the certificates heretofore issued to the applicant, The Willett Company of Indiana, Inc., are as follows:

MC 2815 (Grandfather application):

The authority herein authorized covers the substitution of motor service for rail service between the points named and is restricted to traffic moving by rail in joint rail-motor service to and from points beyond the above named points.

MC 2815 (BMC-10) and Sub 1 and Sub 2:

Service herein authorized is subject to the following conditions: Service to be performed by applicant shall be limited to service which is auxiliary to, or supplemental of, rail service of The Pennsylvania Railroad Company, hereinafter called the railroad.

Applicant shall not serve, or interchange traffic at, any point not a station on the rail line of the railroad.

Shipments transported by applicant shall be limited to those which it receives from or delivers to the railroad under a through bill of lading covering, in addition to movement by applicant, a prior or subsequent movement by rail.

All contractual arrangements between applicant, the railroad, and the American Contract and Trust Company shall be reported to the Commission and shall be subject to revision, if and as the Commission finds it to be necessar in order that such arrangements shall be fair and equitable to the parties.

Such further specific conditions as the Commission, in the future, may find it necessary to impose in order to restrict applicant's operation to service which is auxiliary to, or supplemental of, rail service.

MC 2815 Subs No. 3, 4, and 5:

The service to be performed by said carrier shall be limited to service which is auxiliary to, or supplemental of, rail service of The Pennsylvania Railroad Company.

Said carrier shall not serve any point not a station on a rail line of the railroad.

636-X No shipment shall be transported by said carrier as a common carrier by motor vehicle between any of the following points, or through or to or from more than one of aid points:

MICRO CARD TRADE MARK (R)

22

44

TANDENDE PARTITION OF THE WORLD PARTITION OF





Indianapolis, Logansport, and Terre Haute, Ind., and Chicago,

All contractual arrangements between said carrier, the railroad and the American Contract and Trust Company shall be reported to the Commission and shall be subject to revision, if and as the Commission may find it to be necessary in order that such arrangements shall be fair and equitable to the parties.

Such further specific conditions as the Commission in the future, may find it necessary to impose in order to restrict said carriers' operations to service which is auxiliary to, or supplemental of,

rail service.

Service to off-route points herein authorized shall be from points on the authorized route which lies nearest to a particular off-route point, and the only off-route points to be served, in connection with any particular route, shall be those which are stations on the most direct line of the railroad between the termini of such route.

636-Y BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. MC-2815-Sub No. 6-Form BMC-74.

IN THE MATTER OF THE APPLICATION OF THE WILLETT COMPANY OF INDIANA, INC.

Application for a subpoena duces tecum

Comes now Interstate Motor Freight System, Inc., Detroit, Michigan, protestant, by its Attorneys, Kit F. Clardy and Harold G. Hernly, and respectfully files this application for a subpoena duces tecum to compel one E. M. Christie of Ft. Wayne, Ind. to appear and produce certain documents as will be hereinafter more fully described for the purpose of further cross-examination at the further hearing now assigned on June 1, 1942, at Lansing, Mich., before Examiner Walter W. Bryan and in support thereof respectfully shows:

1. That Mr. E. M. Christie is an employee of the Pennsylvania Railroad Company, residing in Ft. Wayne, Ind. That he appeared at the original hearing of the above proceeding held at Indianapolis on February 10, 1942, and testified in support of ⁸

this extension application.

2. That protestant respectfully requests the right to recall Mr. E. M. Christie for further cross-examination relative to the same subject matter to which he testified at the original hearing, specifically with respect to the underlying data upon which his testimony was based, which is described below.

3. That the specific documents, books, and records that Mr. E. M. Christie should be compelled to produce are 636-Z a. The contract entered into between the Willett Co. and the Pennsylvania Railroad Company covering the extension operations set out in the Sub 6 application.

b. All data and documents used in preparing Exhibit 5 presented and identified by this witness at the hearing on this

application at Indianapolis on February 10, 1942.

c. All data and documents of the Pennsylvania Railroad Company which will show the amount of tonnage handled by that company to or from each of the towns on the proposed extension during the period of time covered by Exhibit 5. This data, documents or information to set out the in-bound and out-bound tonnage handled by the railroad company at each of the towns involved in the extension application during the period covered by Exhibit 5.

d. All of the data, documents or sources of information used by the witness as the basis for his testimony and by applicant's counsel for his offer of proof on the subject of claimed savings to the railroad and covered in the testimony and offer of proof

set forth on pages 523 to 531, inclusive, of the transcript.

-4. That all of the data set out immediately above that protestant desires to be produced at the further hearing named, has a material bearing on the issue of present and future public convenience and necessity for the proposed extension of operations, and should become a part of the record in this proceeding.

Wherefore, protestant respectfully requests that a subpoena duces tecum be select to compel the production of the documents of described above at the further hearing now assigned on June 1,

1942, at Lansing, Mich.

Respectfully submitted.

INTERSTATE MOTOR FREIGHT SYSTEM, INC., KIT F. CLARDY,

Olds Tower Bldg., Lansing, Mich.

HAROLD G. HERNLY,

Attorneys for Petitioners.

By HAROLD G. HERNLY.

Transportation Bldg., Washington, D. C., May 19, 1942.

636-BB

INTERSTATE COMMERCE COMMISSION

OFFICE OF THE SECRETARY

WASHINGTON

W. P. BARTEL, Secretary.

MAY 28, 1942.

Mr. Kit F. Clardy.

Olds Tower Building Lansing, Michigan.

DEAR MR. CLARDY: This is to inform you that your request, dated May 19, 1942, for the issuance of a subpoena duces tecum in No. MC 2815 (Sub-No. 6), directed to E. M. Christie, was considered May 26, 1942, and denied.

One of the documents which you request is a copy of the contract between the Willett Company and the Pennsylvania Railroad under which service will be performed if the application is granted. I understand that the applicant has indicated to the Joint Board that if it considered the contract relevant, it is

agreeable to supplying a copy for the record.

The Joint Board having participated in the earlier hearing is familiar with the issues and in a position to judge whether the contract is relevant and material. It is suggested, therefore, that the question of the production of the contract be taken up with the Joint Board at the further hearing and if the Joint Board believes the contract should be made a part of the record, the applicant will supply it.

.Very truly yeurs,

W. P. BARTEL, Secretary.

cc-Mr. Harry E. Yockey, Attorney at Law, 1250 Consolidated Building, Indianapolis, Indiana.

637 BEFORE THE INTERSTATE COMMERCE COMMISSION

IN THE MATTER OF THE APPLICATION, AS AMENDED, OF THE WHLETT COMPANY OF INDIANA, INC., OF 323 WEST POLK STREET, CHICAGO, ILLINOIS, FILED SEPTEMBER 8, 1941, FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY, FORM BMC 74, AUTHORIZING EXTENSION OF OPERATIONS AS A COMMON CARRIER BY MOTOR VEHICLE IN THE TRANSPORTATION OF GENERAL COMMODITIES, IN INTERSTATE OR FOREIGN COMMERCE, IN THE STATES OF INDIANA AND MICHIGAN, OVER SPECIFIED REGULAR ROUTES

STATE OFFICE BUILDING.

Lansing, Michigan, June 1, 1942.

Met, pursuant to notice, at 9:30 o'clock a. m.

Before Joint Board No. 23, represented by: Richard H. Barkell, Michigan: Oliver H. Eggers, Indiana.

Present: WALTER W. BRYAN, Examiner, Appearances: As heretofore noted.

639

Mr. BARKELL. Come to order, please, gentlemen. We will call at this time for further hearing Docket No. MC 2815, Sub No. 6, application of The Willett Company of Indiana, Inc. Before proceeding, we will take any appearances that have not heretofore been entered. Are there any additional appearances? response.) I might say that the place of hearing, as set out inthe Commission's notice, was to be the Hotel Porter, here in Lansing, but owing to the large number in attendance, it has been necessary to transfer the hearing over here. Therefore, if anybody comes in late, we will accept additional appearances as they At this time, are there any new appearances to be entered in this proceeding that were not entered at the last hearing? (No response.) Apparently not. Now, gentlemen, as I recall it, the applicant had completed its case at the last hearing, so we will proceed at this time with the protestants' side of the controversy: Are you ready to proceed, Mr. Clardy?

Mr. CLARDY. Yes, sir.

Mr. BARKELL. You may call your first witness, please.

Mr. Clarry. If the Joint Board please, we have here this morning a number of witnesses who have come from some distance, particularly from the northern end of the state, and we would like to put them on the stand and release them first, if we can do that. First, however, in order to lay a foundation for their

testimony, I would like to place on the witness stand Mr. Parker, not for a complete examination, but merely for

part of it, in order to delineate the rights that he has, and the service that he renders; and then I will ask leave to withdraw him temporarily, if that is agreeable, in order that we may go forward with the shipper witnesses on the basis of the preliminary testimony of Mr. Parker.

Mr. BARKELL. I assume there will be no objection to that. You

may proceed.

Mr. CLARDY. Mr. Parker.

HARRY PARKER was sworn and testified as follows:

Direct examination by Mr. CLARDY:

Q. Your name, Witness.

A. Harry Parker.

Q. Your residence?

A. Petoskey, Michigan. Q. What is your business?

A. Motor carrier operator.

Q. What is the name of your company?

621175-45---29.

A. Parker Motor Freight. .-

Q. Your company is operating in interstate commerce under authority of a certificate issued to it by the Interstate Commerce Commission, is it not?

A. Yes.

Q. And that order is in Docket No. MC 4713; is that correct?

641 A. Right.

Q. That has reached the status of a certificate?

A. Yes.

Mr. Clardy. May I say, your Honors, that while we have copies of Mr. Parker's authority here, we will not have it marked as an exhibit, because I assume the Commission will take judicial notice of it; but if any of counsel on the other side want a copy for purpose of cross-examination, or for any other purpose, as I say, we have copies available.

Mr. HARRY YOCKEY. I would like to see it.

Mr. CLARDY. All right.

By Mr. CLARDY:

Q. Witness, your company has been engaged in operations over the routes set out in your certificate for approximately how many years?

A. Since '28.

Q. Since 1928.

A. Yes.

Q. And in carrying on your operation, have you been engaged in such service as we ordinarily term a fixed-route, common carrier?

A. Yes.

Q. As I understand it, your operations parallel and duplicate the points requested by the applicant herein, on only a portion of the routes involved.

A. Yes.

Q. Now, would you tell us, so that we will have it at one place in the record, where it is that this duplication starts of your operations with the request of the applicant that is now before the Joint Board and the Commission.

A. That duplication is from Grand Rapids to Traverse City. Michigan; Grand Rapids to Mackinaw City; and Harbor Springs.

By Mr. HARRY YOCKEY:

Q. Pardon me; Grand Rapids to Harbor Springs, did you say? A. Grand Rapids to Traverse City; Grand Rapids to Mackinaw

City; and also a route into Harbor Springs.

Mr. HARRY YOCKEY. All right.

By Mr. CLARDY:

Q. And that route into Harbor Springs, Witness, leaves the route running north from Grand Rapids at what point?

A. Well, now, I do not believe that there is any highway there,

but it is about 3 miles north of Petoskey.

Mr. Clardy. May I see Applicant's Exhibit No. 2, please.

By Mr. CLARDY:

Q. Witness, I show you a copy of the map which has been presented in evidence in this proceeding by the applicant, and marked as Applicant's Exhibit No. 2, and I will ask you to state to us—or rather, to decribe to us the points north of Grand Rapids, involved in the application, that you do not serve, so that we may be sure the record is clear as to just precisely where the duplication runs.

A. Only from Grand Rapids to Cadillac.

Q. That is-

A. I serve everything north of Cadillac, to Mackinaw

643 City, in this application.

Q. In other words, Witness, you do not serve the intermediate points between Grand Rapids and Cadillac.

A. No.

Q. But other than that, you serve everything north of Grand Rapids that is included in that exhibit; is that correct?

A. With the exception of Lake City.

Q. Lake City?

A. Yes.

Q. Very well.

Mr. HARRY YOCKEY. It is a little bit difficult for us to hear the witness over here. Did he say that he does not serve Lake City?

Mr. Munshaw. That is right.

The WITNESS. That is correct.

By Mr. CLARDY:

Q. Now, Witness, in addition to that, you serve certain other communities north of Grand Rapids that are not included in the present application, do you not?

A: Yes,

Mr. CLARDY. Mr. Reporter, Protestants' Exhibit 14 for identification, please.

(Protestants' Exhibit No. 14, Witness Parker, marked for iden-

By Mr. CLARDY:

Q. I show you now, Witness, a map which has just been marked by the reporter as Protestants' Exhibit No. 14 for identification, and I will ask you if that map correctly por-

trays and sets forth the routes that have been authorized to you by the certificate of the Interstate Commerce Commission.

A. It does.

Q. Are you conducting a regular, daily operation over those various routes?

A. Yes, sir.

Q. Serving the points, with the exception of the intermediate points between Grand Rapids and Cadillac, as you have indicated?

Yes.

Q. Now, then, this map includes, in addition to the routes requested by the applicant here, a route that runs to the west—or rather, two routes that run to the west, namely, one over to Ludington, and one over to Manistee; is that correct?

A. Yes, sir.

Q. With a connection between the two, paralleling the shore of Lake Michigan.

A. That is right.

Q. In the part of the state north of Cadillac, your operations are such that you so we practically every point of importance north of that point, between Cadillac and Mackinaw City; is that correct?

A. Yes.

Q. Would you tell us whether the communities which you serve there are small or large communities, as we ordinarily use those terms.

Mr. HARRY YOCKEY. Now, just a moment. If the Joint Board please, I want to object to the question as immaterial. The only question here is whether or not they serve the points in question.

Mr. BARKELL I think the witness may answer the question. Mr. Clardy. I may say, your Honors, it will be important, because the question of the loss of service to small communities is certainly in issue here, by this application, as amended.

Mr. BARKELL Proceed. The witness may answer the question. The WITNESS. I have figures as to the population of those various communities, but I do not have them with me just this minute, because I did not expect to go on the stand this morning.

By Mr. CLARDY:

Q. You have a man who will be on the witness stand a little later on, who can testify with respect to that, have you?

A. Yes, sir, he will be able to cover that. We did not expect to bring those in until this afternoon.

Q. Very well, then. I will reserve that question for the later witness.

A: Yes.

Q. Is it not true, however, Witness, that on the routes which you serve, the only towns of any real size are Cadillac, Traverse City, and Petoskey, and, if we may tretch it a little, perhaps

Mackinaw City.

646 A. That is true.

Q. Harbor Springs is somewhere in between, with respect to size is it not?

A. Why, yes, sir. I think Harbor Springs has a population of about 1,500; but I can give you that definitely this afternoon.

Q. All right. Now, Witness, you were present at the earlier hearing in this proceeding, at Indianapolis, at which the applicant presented its testimony, were you not?

A. Yes.

Q. You therefore have in mind, I take it, some understanding of the kind of service that the applicant is here proposing to render, have you not?

A. Yes.

Q. Is your company in a position to, and would it, furnish the type of service that has been described in this record thus far by the applicant, if the business were to be offered to you?

A. Yes.

Q. Now, you will recall. I take it, that at one place in the testimony the applicant gave some indication that, while there would be freight of this less than truckload nature transferred to trucks at Grand Rapids, there would also be, for some of these other points to the north, a handling of freight by rail to Cadillac, and thence by truck on to destination. You recall that testimony, do you?

A. Yes.

Q. Would there be any service that you could offer to the Pennsylvania Railroad, in connection with movements from the south, passing through Grand Rapids, on that line—would there be any service that you could offer them to points north of Cadillac, either giving the freight to you at Cadillac or Grand Rapids?

A. Yes.

Q. In other words, Witness, are you in a position to furnish them service from either or both of those points?

A. I am.

Mr. CLARDY. May I see the exhibits again, please. Do you remember, Mr. Yockey, the number of the exhibit that has your operating schedules in it?

Mr. HARRY YOCKEY. That was our exhibit No. 4, I believe.

Mr. CLARDY, 4?

Mr. HARRY YOCKEY. Yes.

By Mr. CLARDY:

Q. Now, Witness, I place before you a copy of Applicant's Exhibit No. 4 in this proceeding, showing the times of arrival and departure at Grand Rapids and Cadillac, among other points. You observe, do you, what is set out on the exhibit?

A. Yes.

Q. Do you maintain schedules at the present time at somewhere near the times set out on this exhibit, with regard to departures both from Grand Rapids and from Cadillac, and also from

648 the other points that are listed thereon?

A. Well, at the present time they would not meet these schedules, no, sir, but we could arrange them, so as to meet them.

Q. Well, that was going to be my next question, Witness. At the present time are your schedules precisely at the hours as set out on this exhibit?

A. No.

Q. Your answer is that they are not?

A. They are not ...

Q. Now, would you tell us why the schedules which you are operating at the present time, are set up on the basis that you are using?

A. Our departure time out of Grand Rapids is about 8:30 in the evening, and our schedule is set up for the purpose of render-

ing an over-night service to the points that we serve.

Q. Has your experience over the number of years during which you have been operating, indicated that in order to effect the quickest delivery, that is the best time for departure?

A. Yes sir.

Now, if the railroad, however, should ask you, for example, to make a run northward out of Grand Rapids sometime around—and this, they say, is a little bit flexible—11:30 a. m., as shown by their schedules here, are you in a position to, and would you, furnish that service for them?

A. Yes.

Q. Now they also show a schedule that operates out of Cadillac, going the other way, into Grand Rapids, that leaves Cadillac at 5:30 p. m. What is your present operating time southbound from Cadillac?

A. Approximately 10; 00 o'clock in the evening.

Q. Arriving sometime during the night, at Grand Rapids?

A. At 1:30.

Q. A. m.?

A. Yes.

Q. Now, this 5:30 schedue which is set up in Applicant's Exhibit No. 4, which I have referred to, has not been completely

gone into, as to precisely the reasons for it, but regardless of the reasons, are you in a position to, and would you operate such a schedule out of there at 5:30 p.m. if the railroad should request you to do so?

A, If there was tonnage.

Mr. HABRY YOCKEY. What was that?

Mr. LINDSTRAND. "If there was tonnage."

Mr. BARKELL. Will you read that last answer, please, Mr. Reporter?

(Answer read.)

My Mr. CLARDY:

Q. Now, Witness, as to the other movement out of Cadillac for Traverse City: They show a movement schedule out of there at 3:00 o'clock in the afternoon, getting into Traverse City around 8:00 o'clock at night.

650 A. Yes.

- Q. What is your own present schedule out of Cadillac to Traverse City!
 - A. Between 10:00 and 11:00 o'clock in the morning.

Q: 10:00 or 11:00 o'clock?

A. Between 10:00 and 11:00 o'clock.

Q. Your operations, then, into Traverse City from Cadillac, reach there about what time?

A. On the average, between 1:00 and 1:30.

Q. In the afternoon?

A. Yes, sir. Q. If the railroad—

A. (Continuing.) That is, approximately.

Q. All right.

A. I cannot give you the exact figure.

Q. If the railroad should desire an additional service performed at the hours shown here, are you in a position to, and would you, furnish that service also?

A. Yes.

Q. Your answer is "Yes"?

A. Yes, sir.

Mr. BARKELL. Talk a little louder, please, Mr. Witness.

By Mr. CLARDY:

Q. Now, Witness, in connection with movements out of Cadillac to Petoskey, this schedule shows the same departure time of 3:00 o'clock in the afternoon out of Cadillac, with an arrival at 9:30 in the evening at Petoskey. What time do your trucks get into Petoskey?

A. Our trucks get into Petoskey around 3:00 o'clock-or be-

tween 2:30 and 3:00 o'clock, I would say.

Q. Now, on the southbound movements, they show a departure out of Petoskey at 10:00 o'clock a. m., and a departure out of Traverse City at 12:30 p. m., getting into Cadillac at 4:00 in the afternoon. How does that compare with your present schedules southbound?

A. Did you say 10:30 in the morning out of Petoskey?

Q. 10:00 o'clock a. m. out of Petoskey, and 12:30 p. m. out

of Traverse City.

A. Well, we have one service out of Petoskey that leaves there about 8:00 in the morning, and then we have additional service as it is needed.

Q. And how about the departure southward out of Traverse

City?

A. For Grand Rapids?

Q. For anywhere south.

A. That is around between 5:00 and 6:00 o'clock in the evening.

Q. Would you integurate a schedule at the approximate times as shown in Applican's Exhibit No. 4 here, if the railroad should offer you its business, and ask you to handle it?

A. If there was revenue.

By Mr. HARRY YOCKEY:

Q. I am sorry to interrupt, but I did not get that answer.

A. I said, if there was revenue.

652 By Mr CLARDY:

Q. Now, with regard to Mackinaw City: They set up a schedule here starting out at Petoskey at 10:00 o'clock p. m., and getting into Mackinaw City at 1:00 o'clock a. m. Now, what time does your truck leave Petoskey for Mackinaw City, and how do you handle that operation?

A. It leaves Petoskey about 10:00 a.m.

Q. Getting into Mackinaw City at what time?

A. Around 1:30.

Q. Again I ask you, if they should request a special operation, at or about the time set up on this exhibit No. 4, are you in a position to, and would you, furnish that service?

A. If the revenue was there, and if the tonnage was there; yes,

Mr. HARRY YOCKEY. Will you read that last answer, please, Mr. Reporter?

(Answer read.)

By Mr. CLARDY:

Q. Now, in the southbound movement, they leave Mackinaw City at 4:00 o'clock in the afternoon, getting into Petoskey at 10:00 o'clock in the evening—that is, p. m. in both cases.

A. I understand.

Q. How does that compare with your schedule?

A. Well, we leave Mackinaw City at 1:30, and get back into Petoskey around 6:00 o'clock.

By Mr. HARRY YOCKEY:

Q. P. m. ?

653 A. Pardon me? Q. That is, p. m?

A. Yes.

By Mr. CLARDY:

Q. That is p. m. in both cases.

A. Yes. That is the approximate time.

Q. All right. Now, again I ask you, Witness, if the railroad should offer you this business, and ask you to inaugurate a schedule at or about the time set out on this exhibit, would you do so?

A. Yes.

Q. Now, you have noticed, Witness, that I have framed each of my questions so as to indicate "about the time," or "approximately the time," because in the main case the applicant indicated, before it finished—which I know to be the fact—that these times are not inflexible, but might be varied a little bit.

A. I understand.

Q. Have you, from time to time, shifted your own schedules, and your times of arrival and departure, so that they have not always been at just the precise arrival and departure times that you are using at the present time?

A. Oh, yes; we have occasion to do that from time to time, to

meet the circumstances that may arise.

Q. Now, would you tell us, Witness, where the bulk of your business originates?

. A. (No answer.)

654 Q. In other words, is it from off your line, from points that you do not serve directly, or does the bulk of your business originate on your line?

A. Why, I would say that it would consist of about 50 percent, that we originate on our own line, and about 50 percent transfer

business.

Q. Referring to that which comes to you in transfer, a very considerable portion of it that comes from such points as Chicago, and Indianapolis, and points of that sort.

A. Yes.

Q. Points beyond the state line.

A. Yes.

Q. Now, in connection with movements from Chicago, for example—

Mr. BARKELL. Mr. Clardy.

Mr. CLARDY. I beg your pardon?

Mr. BARKELL. We are going to take a short recess at this time.

(A short recess was taken.)

Mr. BARKELL. Come to order, please, gentlemen. You may proceed, Mr. Clardy.

By Mr. CLARDY:

Q. Now, Witness, at the present time the schedules which you are operating over these routes require the use of approximately how many vehicles?

A. About 40 units.

Q. And are you the only carrier that is operating over this entire route, or are there other carriers that are in competition with you, operating over all, or a part, of the route?

Mr. BARKELL. Before you go any further, Mr. Clardy, let us clarify those 40 units.

Mr. HARRY YOCKEY. Yes.

By Mr. BARKELE:

Q. Do you mean by that, Mr. Parker, 40 tractors and 40 trailers?

A. No.

Q. Or does that represent combinations?

A. We have approximately 21 or 22 trailers, and about 16 tractors, and 11 or 12 straight jobs. I couldn't tell you just exactly.

Mr. HARRY YOCKEY. Will you speak a little louder.

Mr. CLARDY. Keep your voice up, please.

Mr. BARKELL. Read the answer, please.

(Answer read.)

Mr. BARKELL. All right.

By Mr. CLARDY:

Q. Now, Witness, my last question, if I recall correctly, was as to whether or not you have some competition over any part of this operation.

A. Yes; at Traverse City.

Q. Into Traverse City?

A. Yes.

Q. Who serves there?

Mr. HARRY YOCKEY. Between what points?
Mr. CLARDY. Pardon me?

656 Mr. BARKELL. Between what points?

By Mr. CLARDY:

Q. Yes; what points do they serve from, and where to?

A. Darling has intrastate rights into Traverse City.

Q. From where?

A. Grand Rapids.

Q. From Grand Rapids!

.A. Yes, sir; to the points he serves; and then there is Wolverine Motor Express, and Interstate.

Q. Interstate Motor Freight System?

A. Yes.

Q. Yes?

A. And McVicker Brothers.

Q. In operations particularly between Cadillac and Grand Rapids, where you do not serve the intermediate points, do all of those carriers which you have named serve those points?

A. I wouldn't be able to say definitely about McVicker Brothers. I know that they serve Cadillac, but I don't know whether they

serve the intermediate points, or not.

- Q. Well, do you know whether or not Darling is serving those points?
 - A. Yes.

Q. Is he?

A. Yes, sir.

Q. Do you know whether or not Interstate Motor Freight System is serving these points?

A. Interstate Motor Freight is serving the majority of

the points, I believe.

Q. Now, let me see. What was the other carrier that you named, besides McVicker Brothers—or did you name another carrier?

A. Wolverine Motor Express.

Q. Oh, yes. Do they serve those points?

A. Why, I know that they go as far as Big Rapids, but as to points north of there, I couldn't tell you.

Q. Now, there is one other carrier that you did not name, and that is Associated Truck Lines.

A. Oh, yes.

- Q. Does Associated Truck Lines serve any of the points along this route?
 - A. Yes.

Q. They serve up as far north as—what point, if you know?

A. To the best of my knowledge, Rockford. ...

Q. Talking now about the operation known as Associated Truck Lines.

A. Yes.

Q. Now, during the recess which we took just now, Witness, did you check your figures with one of your employees with regard to the apportionment between interstate and intrastate freight over your route?

A. Yes

Q. As a result of that, what did you discover the percentages to be! I believe you testified before that it is about 50-50.

A. 75 percent is transfer freight.

Q. And the balance of 25 per cent consists of freight that is local to the line; is that correct?

A. Right.

Q. By the way, Witness, Associated Truck Lines is, to your knowledge, engaged in both interstate and intrastate operations, is it not?

A. Yes.

Q. And is the same thing true of the Darling operation? .

A. Yes.

Q. How about Interstate Motor Freight System—or do you have any recollection as to that?

A. Oh, yes; Interstate Motor Freight serve intrastate and interstate over a portion of the route.

Q. All right.

A. But I couldn't say that they serve the entire route.

Q. And as to Wolverine Motor Express, they are operating in both interstate commerce and intrastate commerce, are they not!

A. Yes, sir, as far as Big Rapids, as I understand it.

Mr. CLARDY. Now, your Honors, I have a great many more questions to go into with Mr. Parker. Up to this point I have merely tried to put into the record a general outline of his service. Now, if there is no objection on the part of counsel for applicant, I would like to withdraw Mr. Parker for the

659 time being, and put on some of my shipper witnesses.

Mr. BARKELL. Is there any objection to that?

Mr. HARRY YOCKEY. None.

Mr. CLARDY. Mr. Yockey, would you prefer to cross-examine Mr. Parker on the direct testimony that he has given up to this point—

Mr. HARRY YOCKEY. No.

Mr. Clarry. Or would you prefer to wait until he comes back, and I get all through with him, and then have it all in the record at one place?

Mr. HARRY YOCKEY. Yes; we would rather wait, if the Board

please, until counsel has finished all of his direct.

Mr. CLARDY. Fine.

Parker.

Mr. HARRY YOCKEY. It is perfectly agreeable to us to have you withdraw him at this time, to accommodate your other witnesses

Mr. CLARDY. All right."
Mr. BARKELL. That appears to be all for the present, then, Mr.

The WITNESS, All right, sir.

(Witness excused.)

Mr. CLARDY. Your Honors, I find that we have one other carrier witness whom we would like to put on, and then we will be ready to start in with our shipper witnesses.

Mr. BARKELL. All right.

Mr. ANDERSON, Mr. Williams.

EDWARD WILLIAMS was sworn and testified as follows:

Direct examination by Mr. ANDERSON:

Q. Mr. Williams, will you give your full name, to the reporter, please.

A. Edward Williams.

- Q. Where do you reside? A. Fort Wayne, Indiana.
- Q. What is your business? A. Motor truck operator.
- Q. Common carrier?

A. Yes.

Q. In interstate commerce?

A. Yes.

Q. Operating under and by virture of authority received from the Interstate Commerce Commission?

Q. Can you give us the number of your certificate?
A. MC 2974.

Q. What are the routes covered by your operation?
Mr. HARRY YOCKEY. What is the name of his company?

Mr. Anderson. O. I. M. Transit Corporation. I was just about to ask him that,

By Mr. ANDERSON:

661 with what operation, Mr. Q. You are connected Williams?

A. O. J. M. Transit Corporation.

Q. In what capacity!

A. President and general manager.

Q. That company has its principal offices at Fort Wayne, Indiana; is that correct?

A. Yes, sir.

Q. And operates over certain routes in the state of Michigan.

A. Yes.

Mr. Anderson. Mr. Reporter, Protestants' Exhibit No. 15 for identification, please.

(Protestants' Exhibit No. 15, Witness Williams, marked for identification.) .

By Mr. Anderson:

Q. Now, Mr. Williams, I hand you this map, which has been maked by the reporter as Protestants' Exhibit No. 15 for identification, purporting to be an official highway map of the state of Indiana, upon which there are certain lines shown in blue.

A. Yes.

Q. I will ask you to state whether or not that correctly reflects the route of O. I. M. Transit Corporation insofar as the Indiana highways are concerned, and so far as it shows the highways in the state of Michigan.

A. Yes, sir.

Mr. HARRY YOCKEY. Has that been marked as an exhibit?

662 Mr. Anderson. Yes.

Mr. BARKELL. For identification.

Mr. Anderson. At this time, protestant O. I. M. Transit Corporation offers in evidence, Protestants' Exhibit No. 15, purporting to be an official highway map of the state of Indiana, showing O. I. M. Transit Corporation's routes in Indiana, and part of Michigan.

Mr. BARKELL. Is there any objection?

Mr. HARRY YOCKEY. Which is this, now; No. 15?

Mr. Anderson. Yes.

Mr. HARRY YOCKEY. You have not had him identify it as yet, have you?

Mr. Anderson. Yes.

Mr. HARRY YOCKEY. All right. If you are satisfied, O. K.

Mr. BARKELL. All right. Is there any confusion about the marking of the exhibit, Mr. Yockey?

Mr. HARRY YOCKEY. I guess not.

Mr. Anderson. If there is, I will state for the record that what the reporter has just marked as Protestants' Exhibit No. 15 for identification, is an official highway map of the state of Indiana, reflecting, as indicated in blue crayon, the routes of O. I. M. Transit Corporation in Indiana, and in Michigan, so far as Michigan is shown.

The WITNESS. That is correct.

Mr. BARKELL. All right. Let us proceed.

663 By Mr. Anderson:

Q. Now, Mr. Williams, you have before you a map of the State of Michigan, have you not, on which there are certain routes, or lines shown in blue, or purple, including, in the lower portion of the map, the upper part of the state of Indiana, connecting up with the map heretofore identified as Protestants' Exhibit No. 15.

A. Yes.

Mr. Anderson, Mr. Reporter, will you please mark this Michigan map as Protestants' Exhibit No. 16 for identification.

(Protestants' Exhibit No. 16, Witness Williams, marked for

identification.)

By Mr. Anderson:

Q. Now, Mr. Williams, still referring to this map, marked by the reporter as Protestants' Exhibit No. 16 for identification, I will ask you to state whether or not this map shows correctly the routes of your company, O. I. M. Transit Corporation, in the State of Michigan.

A. Yes.

Q. And taken together, the two maps, exhibit No. 15 and exhibit No. 16, show all of the routes of O. I. M. Transit Corporation in full; is that correct?

A. Yes.

Q. The Indiana map being exhibit No. 15, and the Michigan map being No. 16.

A. Yes.

Mr. Anderson. At this time, if the Board please, Protestant O. I. M. Transit Corporation offers in evidence

Protestants' Exhibit No. 16, being a map of the State of Michigan, showing the routes in that state of O. I. M. Transit Corporation.

Mr. HARRY YOCKEY. I think, if the Board please, we shall ask that you reserve ruling on these exhibits at this time, until after we have had an opportunity to examine them a little more closely, and cross-examine the witness on them, if we desire, as is the usual practice.

Mr. Anderson. I do not see any particular reason for that, your Hopors, but I have no objection to that, if that is what counsel wants to do. The witness has testified that they correctly show

his routes, and that is all they are offered for.

Mr. BARKELL. Oh, in the case of any exhibit, opposing counsel has the right to examine it, before it is received in evidence, of course.

Mr. Anderson. All right.

Mr. BARKELL. I cannot see any objection to that.

Mr. ANDERSON. That is all right.

By Mr. ANDERSON:

Q. Now, Mr. Williams will you please explain to the Joint Board and the Commission the service that is being rendered by you in interstate commerce over the entire routes of O. I.M. Transit Corporation, as to the Michigan routes, so far as the Michigan routes are concerned-that is, I mean between Fort Wayne, Indiana, and the points in Michigan shown on Protestants Exhibit
No. 16 for identification.

665 A. 1 presume your question means, from Fort Wayneor rather, between Fort Wayne and Kalamazoo, Michigan.

Q. Yes.

A. Where it affects this application!

Q. Well, that is-

A. Or rather, where this application affects our operation.

Q. Right.

A. Well, we have a daily service between Fort Wayne, Indiana, and Kalamazoo, Michigan; including all intermediate points, over Indiana highway No. 3, U. S. highway No. 6, Indiana highway 9, Michigan highway 78, U. S. highway 112, and U. S. highway 131—including all intermediate points.

Q. Serving all intermediate points.

A. Yes.

Q. Daily.

A. That is right,

Q. And how many pieces of equipment do you operate over that route daily?

A. Between Fort Wayne and Kendallville, Indiana, we have 3 trucks operating daily; and between Fort Wayne, Indiana, and Kalamazoo, Michigan, there are 2 trucks daily.

Q. Are all of those pieces of equipment loaded to capacity at

all times ?-

A. No, sir; they are not, and I fear very much that from now on, there will be even less than there has been in the past.

666 . Q. Why?

A. By reason of O. D. T. order No. 3, and also the loss of business in through there, due to the fact that the manufacturing plants, especially in Kalamazoo, have now been diverted to the production of defense materials.

Q. Would you be able, and are you willing, to handle any freight that may be offered to you by The Pennsylvania Railroad, for movement from points in Indiana into Michigan, or vice versa.

A. Yes, sir.

Q. That is, over your route.

A. Yes, sir, I would. As a matter of fact, I have already offered my service to The Pennsylvania Railroad, but they replied that they were already well taken care of by The Willett Company, and Pennsylvania Truck Lines.

Q. Now-

Mr. HARRY YOCKEY. Pardon me, but may I ask a preliminary question right there, us to whether that was in writing, or not.

Mr. Anderson. Yes; you may ask him that question.

The WITNESS. How is that?

By Mr. HARRY YOCKEY:

Q. Was that in writing?

A. No, sir; it was not.

Q. That was just conversation, was it?

A. That was in conversation with a representative of The Pennsylvania Railroad—

Q. That is all I want to know.

A. At Fort Wayne, Indiana.
Mr. HARRY YOCKEY. All right.

By Mr. ANDERSON:

Q. Now, Mr. Williams, your furthermost point north in the state of Michigan, as shown by Protestants' Exhibit No. 16 for identification, on the one route is Kalamazoo—

· A. Yes.

Q. And on the other, is Jackson.

A. Yes.

Q. And you connect at Jackson:

A. Yes.

Q. What, then, are the points in the state of Michigan that you serve from points elsewhere on your route, that are covered by the proposed application—and I am laying before you now the map of The Willett Company.

A. Sturgis, Michigan; Three Rivers, Michigan; Schoolcraft,

Michigan; and Kalamazoo.

Q. You render a daily service there, do you?

A. Yes.

Q. To and from all of those points.

A. Yes, sir.

Q. Both truckload and less than truckload.

A. Yes.

By Mr. EGGERS:

Q. Just a moment right there, please, Mr. Williams. Is Three Rivers in the application—

A. Yes.

668 Q. On the proposed route?

A. Yes.

Q. To your knowledge, is it?

Mr. BARKELL. No.

The WITNESS. According to the map, it is.

. By Mr. Anderson:

Q. Three Rivers, Michigan, is on the proposed route, is it not, Mr. Williams?

A. Yes.

Mr. Anderson. That is correct, is it not?

Mr. HARRY YOCKEY. How is that?

Mr. Anderson. The Joint Board member inquired if Three Rivers is on the proposed route.

Mr. HARRY YOCKEY. Three Rivers is; yes.

Mr. Anderson. Yes; it is, your Honor.

Mr. Eggers. Well, now, just a moment. Let us be off the record a moment.

Mr. BARKELL, Yes.

(Discussion outside the record.)

Mr. BARKELL. Back on the record.

Mr. EGGERS. On the record: Three Rivers is not involved, then, is it?

Mr. HARRY YOCKEY. No; it is not, your Honor, and neither is Schoolcraft.

Mr. EGGERS. All right.

Mr. BARKELL. Proceed, Mr. Anderson.

669

By Mr. Anderson:

Q. Now, Mr. Williams, with respect to interstate freight moving over your line, from points east of Fort Wayne, any point east of Fort Wayne, such as Columbus, Ohio, or Pittsburgh, Pennsylvania, moving, or consigned, to Kalamazoo, or Sturgis, or any of the points on this route; Do you handle some of that freight?

A. Yes.

Q. And what service do you give, with a connecting line, in the case of a shipment, say; from Pittsburgh, Pennsylvania, consigned to Kalamazoo, Michigan?

A. About from 48 hours—

By Mr. HARRY YOCKEY:

Q. 48 hours?

A. Running from 48 hours to 72 hours.

By Mr. Anderson:

Q. And what line do you connect with at Fort Wayne, coming from the East

A. Oh, there are numerous lines operating from the East, that we connect with at Fort Wayne.

Q. Name some of them.

A. Motor Cacgo; CCC Highway; and Commercial Motor—those are three of the largest ones—or the three largest ones.

Q. Do you experience any delay in getting freight transferred coming from eastern points to Fort Wayne, destined for delivery in Kalamazoo, or other points involved, in Michigan?

A. We do not have any delay that I know of there; no, sir. Mr. Anderson. Now, if the Board please, I believe that is all

in connection specifically with the operations of O. I. M. Transit Corporation.

By Mr. Anderson:

- Q. Now, Mr. Williams, I would like to have you name for the record any other carriers operating between Fort Wayne, Indiana and Kalamazoo, Michigan—that is, any other motor vehicle operators.
 - A. Interstate Motor Freight System.

Q. Interstate?

A. Yes.

Q. Any others?

- A. And Norwalk Truck Lines. Those are the two largest.
- Q. Do they serve Sturgis?

A. Yes.

Q. And other points in Michigan that are covered by the proposed Willett Company route?

A. Yes, sir.

Q. In addition to Sturgis.

A. Yes.

Mr. Anderson. Now, if the Board please, I want to ask Mr. Williams a few questions with respect to the service of Day's Transfer. Mr. Reporter, Protestants' Exhibit No. 17 for identification, please.

(Protestants' Exhibit No. 17, (Witness Williams, marked for

identification.)

By Mr. ANDERSON: .

Q. Now, Mr. Williams, I lay before you this map, which has been marked by the reporter as Protestants' Exhibit No.
 17 for identification, and I will ask you to state if that map correctly reflects the operations of Day's Transfer, of Elkhart, Indiana,

Mr. HARRY YOCKEY. Well, now, just a moment. I do not want to object if counsel is merely intending to ask the witness if this correctly reflects their operation, just in a general way, if he knows,

Mr. Anderson. I will give you a copy.

Mr. HARRY YOCKEY. As far as that is concerned, I will take your word for it, Mr. Anderson. If you want to introduce that, and you state that that is their operation, that is all right. Or if he knows, in a general way, why, he may identify it.

Mr. ANDERSON. All right.

By Mr. ANDERSON:

Q. Does that map correctly and accurately reflect the operations of Day's Transfer of Elkhart, Indiana, Mr. Williams!

A. As far as I know.

Q. As far as you know their routes?

A. As far as I know; yes, sir.

Mr. HARRY YOCKEY. May I suggest further, in connection with Protestants' Exhibit No. 17 for identification, that you ought to get the number of their authority into the record also, their I. C. C. number.

Mr. Anderson. Yes.

Mr. HARRY YOCKEY. So that we may have that in the record at this time, in connection with the exhibit.

Mr. Anderson. I will do that. The number of the certificate issued by the Interstate Commerce Commission to Day's Transfer—well, now, I am very sorry, but I will have to furnish that later.

Mr. HARRY YOCKEY. All right.

Mr. BARKELL. How is that?

Mr. Anderson. I am very sorry, your Honor, but apparently I do not have that available just at this time.

Mr. HARRY YOCKEY. That is all right.

Mr. Anderson. However, I will furnish you, Mr. Yockey, with the I. C. C. number, since I do not happen to have it here.

Mr. HARRY YOCKEY. That is quite all right.

Mr. Anderson. At this time, if the Joint Board please, Protestant O. I. M. Transit Corporation offers in evidence Protestants' Exhibit No. 17; and with that, that is all I have—subject, of course, to my supplying Mr. Yockey with the I. C. C. number of Day's Transfer, or a copy of the certificate—I will give you a copy of the certificate, Mr. Yockey, so that you can check it.

Mr. HARRY YOCKEY. All right,

Mr. BARKELL. Protestants' Exhibits Nos. 15, 16, and 17 will be received in evidence.

(Protestants' Exhibits 15, 16, and 17, Witness Williams re-

ceived in evidence.)

Mr. Anderson. Now, if the Joint Board please, I will ask that counsel for applicant cross-examine Mr. Williams right now, if they have any cross-examination of him, because he is going to be compelled to leave immediately.

Mr. HARRY YOCKEY. Just a moment, now. You have offered these exhibits, Protestants' Exhibits 15, 16, and 17, have you!

Mr. Anderson. Yes; and they have been received.

Mr. HARRY YOCKEY. No.

Mr. Anderson. The .Chairman just received them. .

Mr. HARRY YOCKEY. We asked for an opportunity to examine them and cross-examine the witness upon them.

Mr. BARRELL. Off the record.
(Discussion outside the record.)

Mr. BARKELL. Back on the record. The record shows that the

exhibits have been received. Proceed.

Mr. HARRY Yockey. Now do I understand that the plan is to withdraw this witness also at this time, temporarily, and have his cross-examination follow a little later on?

Mr. Anderson. Well, I do not know whether I can hold Mr. Williams here or not. He is very anxious to get away, and get back to Fort Wayne, and we are ready for him to be cross-ex-

amined right now

Mr. HARRY YOCKEY. Well I thought that you were going to follow the same procedure with this witness that you did with the preceding witness, put him on now, and get his direct examination in, and let the cross-examination follow along later.

Mr. Anderson. I did not so understand it.

Mr. HARRY YOCKEY. Well maybe I misunderstood.

Mr. CLARDY. We said nothing at all about having the crossexamination of this particular witness deferred, your 675 Honors. As I understand it, the witness is compelled to

leave just as soon as he can. We stated at the outset that we were putting him on at this time so as to dispose of his testimony.

and get ready for the testimony of the shipper witnesses.

Mr. Anderson. Yes. The only witness whom Mr. Clardy was holding back, as far as the cross-examination is concerned, was the preceding witness, Mr. Parker, and that was because he was not through with him yet on direct. But we are through with Mr. Williams on direct, now, and we are tendering him for cross-examination.

Mr. BARKELL. Proceed with the cross-examination.

Mr. HARRY YOCKEY. Will your Honor indulge us just a moment here.

Mr. BARKELL. All right.

Mr. HARRY YOCKEY. I do not think we will have any cross-examination of this witness, your Honor.

Mr. Barkell. Are there any further questions of the witness? (No response.) If not, the witness is excused.

(Witness excused.)

Mr. BARKELL, Call your next.

Mr. Clardy. Now your Honor, before this next witness is sworn, there was some question came up here a few moments ago, with respect to whether or not the two points of Three Rivers and Schoolcraft are included in the application. As I understand it,

those points are definitely within the application, but some-676 body over there at the table of counsel for the applicant said "No," so I do not know whether the record is clear on that or not. Mr. HARRY YOCKEY, Just a moment, now. What particular route are you talking about, now?

Mr. EGGERS. Off the record.

Mr. CLARDY. Your Honor-

Mr. Eggers. Or do you want this on the record?

Mr. CLARDY. Yes; I would like to have it on the record, if I may.

Mr. EGGERS. All right.

Mr. CLARDY. Because I think the record, as it now stands, is confused.

Mr. HARRY YOCKEY. What is the question, now?

Mr. CLARDY. You are not eliminating those two towns, are you?

Mr. HARRY YOCKEY. Which two towns?

Mr. CLARDY. Schoolcraft and Three Rivers.

Mr. HARRY YOCKEY. On which route is that?

Mr. CLARDY. On any of the routes that you are asking for here.

Mr. HARRY YOCKEY. I will state if the Joint Board please that we are not eliminating anything. We have testified that we are serving all of the cities and towns, all of the intermediate cities and towns, on the Pennsylvania Railroad.

Mr. CLARDY. Well the reason I raise the question is because you, or somebody over at your table, made an ob-

jection, as I recall it, to an inquiry about Three Rivers and Schoolcraft, so we desisted from asking any questions, because somebody over on your side said that they are not included in the application.

Mr. HARRY YOCKEY. They are not included in our list; no.

Mr. CLARDY. Well, your Exhibit No. 7, Applicant's Exhibit No. 7 in this proceeding, specifically lists them, but if we are to understand now that, anything to the contrary notwithstanding, those points are definitely not being requested here, why, that is all right.

Mr. HARRY YOCKLY. They are not in the list.

Mr. BARKELL. All right.

Mr. CLARDY. Mr. Miller.

LEO MILLER was sworn and testified as follows:

Direct examination by Mr. CLARDY:

Q. Your name, Witness.

A. Leo Miller.

Q. Where do you live?

A. Sturgis.

Q. Michigan?

A. Yes.

Q. What is the nature of your busines at that point?

A. 100 percent defense work.

Q. What is the name of your company?

A. Scoville Manufacturing Company.

By Mr. HARRY YOCKEY:

Q. Scoville Manufacturing Company?

A. Yes, sir.

By Mr. CLARDY!

Q. And that company is engaged in manufacturing what kind of articles at the present time?

A. We are manufacturing shell cases; ammunition box wing-

nuts; and gun clamps.

Q. Your company has been engaged in the manufacture of metal products of various kinds for approximately how many years?

A. 30.

Q. Now you testified a moment ago that the principal business of your company at the present time is furnishing the items which you enumerated for national defense?

A: Yes.

Q. Does your company receive and ship in both interstate commerce and intrastate commerce?

A. Yes.

Q. And in so doing, does it have occasion to use both rail service and motor carrier service?

A. Yes.

Q. Particularly now with respect to your motor carrier service, does your company have occasion to ship in interstate commerce to points to the south, particularly toward Fort Wayne, Indiana?

A. No; not now.

679 Q. Was there a time in the past, however, when you did so ship?

A. Yes.

Q. But the change which has been brought about by the outbreak of the war, has eliminated that movement for the present at least; is that correct?

A. Yes

Q. In normal times, however, was there some considerable volume of movement there—

A. Well; no.

Q. —or was there just an occasional movement, to and from that town?

A. Just occasional.

Q. Now at the present time, witness, your in-bound movements particularly into Sturgis are from what direction?

A: East and west.

Q. You receive some from Chicago, do you?

A. Chicago and Detroit.

Q. In connection with the movements from Chicago, are those at the present time being handled principally by truck?

A. Yes.

Q. At the moment, are you shipping out-bound to points along the route set out on the map here—and I am putting before you now, this map—northward into Michigan, along this red line, or not?

A. Why, yes, sir; we are, but it changes—that is, it shifts from the red route there, over to Greenville, Michigan.

Q. In other words, it goes north to Grand Rapids:

A. Yes.

Q. And then follows some route slightly to the east.

A. Yes.

Q. Over to Greenville.

A. Yes.

Q. How are you handling that movement at the present time?

A. By Associated Truck Lines.

Q. Now, is there any other movement at the moment that you are handling, either out-bound or in-bound, to or from any point on this red line anywhere between Fort Wayne, Indiana, on the south, and Mackinaw City, Michigan, on the north?

A. Well-

Q. Or is Greenville about the only point?

A. Greenville is the only point.

Q. Prior to the outbreak of the war, however, did you have occasion to, and did you ship to a great many points up and down that route, as well as other points in Michigan?

Mr. HARRY YOCKEY. Just a moment. May I have that ques-

tion again, please, Mr. Reporter.

(Question read.)

Mr. HARRY YOCKEY. I object to the question, if the Board please, as referring to an intrastate movement, which has no bearing on the issue in this case.

Mr. Clardy. Oh, yes; your Honors, it does have a bearing, because it affects the ability of the carriers already in the field to continue operations, whether interstate or intrastate.

Mr. HARRY YOUKEY. I object to the question also for the additional reason that it does not involve a present condition, but a

condition in the past.

Mr. CLARDY. That is exactly why it is important, your Honors, because we want to show that, due to the conditions existing at the present time, the need for any additional service is less than it was prior to the outbreak of the war.

Mr. HARRY YOCKEY. I will stand on my objection.

Mr. BARKELL. You do not claim, do you, Mr, Clardy, that this would give any intrastate authority to the Willett Company?

Mr. Clardy. No; I do not, your Honor, but I do contend, and this is why I think it is very material, from our standpoint, that the carriers which they want to displace, if the authority which is sought here is granted, have been handling and are handling both interstate commerce and intrastate commerce. The result of the granting of a right here to haul interstate commerce, will undoutedly be to affect the ability of the carriers already in the field, to operate at all, whether it be in interstate commerce or intrastate commerce. As you suggest, they cannot get intrastate rights here, but the granting of the authority asked for here will

affect interstate operations, and in turn, that will affect the ability of the carriers already in the field, to handle the

business, even though the applicant cannot get that authority. If this will affect a carrier at all, it will affect that carrier in its entire service, and that is why I say it is material. I might add, I do not intend to pursue the particular point further than just one or two more questions, merely to show the Joint Board and the Commission just exactly what it will mean.

Mr. HARRY YOCKEY. If the Joint Board please, we are not trying in this case, as I believe I have said repeatedly before, to take any business away from anybody. In line with the decisions of the Commission, we are simply trying to improve the present service. We are not trying to displace anybody, or take business away from anybody. We are just simply trying to improve the present service of the railroad. In my judgment, intrastate commerce is not involved here in any manner.

Mr. BARKELL. The objection is sustained.

Mr. Clardy. Will you read my last question, please, Mr. Reporter?

(Question read.)

Mr. Clardy. I will make the offer of proof, then, your Honors, that if the witness had been permitted to answer that question, he would have testified that his company has been shipping to practically all of these points, as well as almost every other point

in the state of Michigan.

Mr. HARRY YOCKEY. I renew my objection to the offer of proof, if the Board please.

Mr. BARKELL. Sustained.

By Mr. CLARDY:

Q. Now, witness, as I briefly explained to you before you went on the witness stand here, the applicant is seeking in this proceeding the right to institute a new truck service from Fort Wayne, Indiana, on the south, through Sturgis, Grand Rapids, and Cadillac, Michigan, clear up to Mackinaw City. You understand that, do you

A. Yes.

Q. At the present time is the motor carrier service that is being offered to you, and in the immediate past, has the motor carrier service that has been offered to you, out of the town of Sturgis, Michigan, by the presently authorized carriers, been sufficient and adequate to meet all of the needs of your company?

A. Very much so; yes,

Q. If a new carrier should be introduced into the field, as is here proposed, by this applicant, and if that should have any effect at all upon the carriers presently in the field in their ability to continue to serve you, would that have some adverse effect upon your present business?

Mr. HARRY YOCKEY. Now just a moment. We want to object to the question, if the Joint Board please, first, because it involves several assumptions, or assumes several conditions

assumes that this is a new service, and the fact is that it is not a new service. All that is involved here is an attempt to improve the service of the railroad. We are not attempting to invade the field of any other carrier. The Commission has held in a number of these cases, that the service is not a new service, and that we are not attempting to invade the field of any other service. I also object to the question on the further ground that it calls for an opinion of the witness as to what effect the granting of the authority asked for here would have, and this man, up to the present point, certainly, has not been qualified, and cannot be qualified to state what effect it would have in any manner whatsoever.

Mr. CLARDY. New, your Honors, that is the applicant's theory of the case, and they are entitled to their own theory, and their own view, of course. But that is not binding on us in any way. We have our own theory of the case, and our theory is, and we are certainly entitled to present proof on that basis, that the mere fact they happen to be operating a railroad here, does not in any way take away the character of this operation as a new truck operation; and therefore, since it is a new truck operation, we are certainly entitled to present our proof, to show the effect that the instituting of this new operation will have upon the carriers that

are already in the field, whether they concede that that effect will exist or not.

Mr. HARRY YOCKEY. Now, if the Joint Board please, counsel is getting into the realm of opinion, now, asking this man to give an opinion on a matter that it is for the Joint Board and

the Commission to determine. If they have any concrete evidence to present, to show what the effect of the granting of this application will be, that is one thing, but they are not entitled to ask for the opinion of this witness, or any other witness, on a matter as to which the Joint Board and the Interstate Commerce Commission are to draw the ultimate conclusion.

Mr. BARKELL. Will you go back and read that question please.

Mr. Reporter?

(Question read.)

Mr. BARKELL. If the witness knows the answer to that question, he may answer it. The objection is overruled.

Mr. CLARDY. You have just heard the question, witness. Do you have it in mind?

The WITNESS. Yes.

Mr. CLARDY. All right.

The WITNESS. Yes; it will.

By Mr. CLARDY:

Q. How?

A. In one way or another.

Q. Specifically, how?

A. Well, if they were to run a truck line, that is, another truck line, through the city of Sturgis, why, it would jeop-

· ardize, in my opinion, the operations of the other truck lines that are in existence at the present time, operating out of Sturgis. Through this new set-up, as I understand it, there is going to be a consolidation of shipments, particularly in the busifiess that we are engaged in, which is war work; and the truck lines that are in there at the present time, operating in there right now, have adequate service to take care of us and move the material immediately. In my opinion, at the present time, they are set up in very good shape to take care of all of the shipments out of Sturgis. Of course, as I understand it, this is an interstate proposition, and we do have interstate movements, as well as intrastate movements, in connection with Government work.

Q. By the way, witness, in connection with that last answer, will you tell me again where your in-bound material comes from!

A. Chicago and Detroit.

Q. In connection with movements from Chicago, have you ever had occasion to use rail service?

A. On the in-bound?

Q. Yes. A. No.

Q. Woald you tell us why?

A. (No answer.)

Q. Is that because of the service, or what?

A. That is strictly because of the service; yes, sir; because we are able to get our shipments, coming in from either direction, in the following morning, and they are delivered right to our dock at around 7 o'clock in the morning, the following morning.

Q. Do you mean by truck?

A. Yes, sir.

Q. In the present movement by rail, what if any occasion do

you have for such service?

A. If I understand your question right, we don't have any occasion for such service, as far as that is concerned, but we do have a movement once in a while into Sturgis from Berne, Indiana. Might I just give an illustration in connection with that?

Q. Yes.

A. We had a shipment that was moved out of Berne, Indiana, along about a month ago, that took approximately one week to get into Sturgis, moving over the Pennsylvania Railroad.

Q. Where is Berne?

A. South of Fort Wayne.

Q. Oh, yes. It is on the present line of the Pennsylvania Railroad, about 25 or 30 miles south of Fort Wayne; is that correct?

A. Yes.

Q. You know, do you not, that at the present time the applicant here, the Willett Company, is running a truck line through Berne.

A. No.

Q. For the Pennsylvania Railroad?

A. I don't know about that.

Mr. HARRY YOCKEY. Well, now, just a moment. I object to the question, if your Honors please. There is nothing in this record regarding Berne, Indiana, or as to whether the Willett Company does or does not run a truck line through Berne.

Mr. CLARDY. Oh, I beg to differ with you; counsel. Your Exhibit No. 1 in this proceeding shows it. That is the exhibit that you produced here, to show where this service is going to be ren-

dered.

Mr. HARRY YOCKEY. But it does not show that they run into Berne.

Mr. CLARDY. It does not show what kind of service they are giving.

Mr. HARRY YOCKEY. Well then how is this witness qualified to answer a question of that sort, unless he knows specifically where the truck line rups?

Mr. BARKELL. What is the question?

1

The WITNESS. I answered it.

Mr. CLAROY. I think you answered that you do not know.

The WITNESS. Yes.

Mr. BARKELL. Well then what is all the argument about?

By Mr. CLARDY:

Q. That is what you said, is it not?

389 A. Yes.

Mr. CLARDY. All right.

Mr. BARKELL. We will let it go at that, then.

Mr. HARRY YOCKEY. All right. I did not know that the witness had answered the question. I did not hear it.

Mr. BARKELL. Neither did I.

By Mr. CLARDY:

Q. At any rate, witness, it took about how long, did you say, to get that particular shipment from Berne, Indiana, into your plant at Sturgis, Michigan?

A. Seven days.

Q. Now at the present time what truck service is your company using—what truck lines?

A. Associated Truck Lines; Grand Rapids-Kalamazoo; Interstate Motor Freight System; Conklin; and Day's Transfer.

Q. Is the service which you are receiving at the present time over the lines of all of those carriers, a uniformly good service?

A. Very much so.

Q. Are they all supplying the equipment to you that you call for?

A. Yes. Q. And are they giving you the expeditious service that you are requesting of them?

A. Yes.

Q. Has the need for a fast, expeditious service been in-690 creased somewhat by reason of the outbreak of the war, and the change in the commodities which you are producing? A. Very much so.

Q. Have those truck lines been able to meet your increased

demands in that regard?

A. Yes.

Q. Now witness if the Pennsylvania Railroad should desire to furnish service into Sturgis, in connection with movements coming into Fort Wayne, Indiana, by rail, and there being transferred to a truck line, would it be perfectly agreeable to you if some carrier presently operating—that is, of course, some motor carrier presently operating between Fort Wayne, and Sturgis, were to furnish that service to you?

Mr. HARRY YOCKEY. Just a moment.

The WITNESS. Yes-

Mr. BARKELL. Just a moment, Mr. Witness.

The WITNESS. Pardon me.

Mr. HARRY YOCKEY. I object to the question, if the Board please, on the ground that the witness has testified that he does not use the Pennsylvania Railroad in this service; and furthermore, the question as to whether or not such an arrangement would be agreeable to the witness, is not involved here. There is simply a question of service involved here.

Mr. CLARDY. What Mr. Yeckey has said, your Honors, goes merely to the probative value, or the weight to be given to the testimony of the witness. Every shipper in the United.

States has a right to express his opinion, or his judgment, as to what he would prefer, in that regard, whether he is shipping a particular way at the present time, or not.

Mr. BARKELL. The witness did testify, I believe, Mr. Yockey as to one shipment at least that he had coming from Berne, Indi-

ana, over the Pennsylvania Railroad.

Mr. HARRY YOCKEY. That is correct, your Honor. I had forgotten about that. I will withdraw the objection, then, because he did testify he had one shipment come in, as you say, from Berne, on the Pennsylvania.

Mr. Egoras. I would like to ask a question right here. It has been a little bit difficult to hear the witness, and you gentlemen have been moving along rather fast. Is the only thing that he is interested in, now, the movement from Berne, Indiana, to Sturgis, Michigan?

Mr. CLARDY. No.

Mr. Eggers. Or does he have any other need for service—or any need for other service between Fort Wayne, Indiana, and Sturgis, Michigan, other than a movement from Berne? I would like to know that.

Mr. CLARDY. I will ask the witness.

By Mr. CLARDY:

Q. Do you, witness?

A. No ..

By Mr. EGGERS:

Q. No other need?

392 A. No.

By Mr. CLARDY:

Q. At the present time? Mr. Eggens. Yes.

A. That is right.

By Mr. EGGERS:

Q. That is right, is it?
A. At the present time.

Mr. HARRY YOCKEY. I have already stated, if the Board please, that I withdrew the objection,

Mr. CLARDY. Very well.

Mr. BARKELL, Let us proceed, then.

Mr. CLARDY. I will rephrase my question, anyway.

Mr. Eccess. I think he has answered it.

The WITNESS. Yes,

Mr. CLARDY. Very well.

By Mr. CLARDY:

Q. Witness, you have had a rather long experience and acquaintance with the various carriers, motor carriers, that are serving you at the present time, have you not?

A. Yes.

Q. If a carrier were to be permitted to transport freight from Fort Wayne, Indiana to Sturgis, Michigan, and if at some time in the future there should be some need, so far as your company is concerned, for that service, what would be your preference as

to whether one of the present carriers should be authorized to render that service, or a new carrier introduced into the

field

A. One of the present carriers as against a new one!

Q. Yes, sir.

A. Oh, I would say that the present carriers—one of the present carriers should be entitled to perform the service.

Q. Why?

A. Well, for the simple reason that the carriers that we are acquainted with, know our way of operating, our way of doing business at the plant; they are acquainted with our facilities for loading and unloading freight; and as far as that is concerned, they are rendering an adequate service out of Fort Wayne.

Q. Does the experience that you have had with the service of the Pennsylvania Railroad have anything to do with the answer

that you just gave!

A. Very much so.

Q. Why?

A. Well, through the service that they have given—or rather, because of the service that they have given into Sturgis.

Q. Well, so that the record may be clear on that, has that

service been good, bad or indifferent?

Well, perhaps the most diplomatic way of expressing it would be to say that the service has not been good.

Q. All right. Now at the present time is you company one of the largest manufacturing companies, if not the largest manufacturing companies, in the city of Sturgis, Michigan!

A. Well, I don't know about its being the largest, but it is one of the largest, at least, if not the largest.

Q. What size town is Sturgis?

A. Approximately 8,500 people.

By Mr. HARRY YOCKEY:

Q: How many?

A. Approximately 8,500.

By Mr. CLARDY:

Q. There are only a few manufacturing concerns located in hat town, are there not?

Q. About how many?
A. Well—

Q. Besides yourselves.

M. In addition to us?

Yes.

A. Oh, probably four or five.

Q. Now with respect to the volume of business that your company is doing at the present time: By reason of the outbreak of the war, has that gone up, or down, or is it about the same as it was?

A. Oh, it has gone down, considerably.

Q. You have some acquaintance, I take it, have you not, with the other shippers and manufacturers in your community?

A. Oh, yes.

Q. Do you know whether or not just about the same thing has happened to them, as has occurred in your own 695 business !

A. Well I think as to the greater percentage of them, if not all of them, their volume has gone down considerably.

Q. They have likewise been affected adversely.

A. Yes, sir.

Q. Would you tell us who are the other principal manufacturers there at Sturgis.

A. The Harder Corporation; the Kirsch Company; and the Wade Electric Company.

Q. Now those companies, along with your own company, are about the only volume shippers in Sturgis, are they not?

A. To the best of my knowledge, yes.

Q. In other words, the rest of the shippers or receivers of freight at Sturgis are primarily merchants, or persons who are engaged in the retail business, are they not?

A. Why, I imagine that would be about correct, yes, sir. I

wouldn't want to say definitely as to that, however.

Q. About how frequent motor carrier service do you have into your plant, by all of the carriers that are serving you?

A. (No answer.)

Q. In other words, is there one delivery per day, or more than one delivery, and if so, is there a large number of deliveries?

A. Well, the way we operate is, if a carrier has no trucks in Sturgis, we pick up our own freight, unless of course it is over the 5,000 pound limit; and if it is over the 5,000 pound limit, that probably is moved—there probably is a inovement, perhaps once or twice a week.

Q. Do you have several carriers that have stations and docks

in your town/!

A. Yes.

Q. Which ones are they?

A. Conklin; Inter-State Motor Freight; Associated Truck Lines; and Day's Transfer, to the best of my knowledge.

Mr. CLARDY. You may inquire. Mr. Barkell. Cross examine.

Mr. HARRY YOCKEY. Just one or two questions.

Cross-examination by Mr. HARRY YOCKEY:

Q. You testified, Mr. Witness, that this shipment which you said you received from Berne, Indiana, took seven days to get to Sturgis.

A. Yes.

Q. What do you mean by that ?

A. How do you mean?

Q. When you say it took seven days.

A. I mean, it was seven days on the road.

Q. Well do you mean by that, seven days from the time you ordered the shipment—

A. No.

Q. — or seven days from the time it left Berne?

A. Seven days from the time it left Berne.

Q. Do you know how it traveled?

A. How it traveled?

Q. Yes.

A. I haven't got the slightest idea.

Q. Well, now, you would have been interested if that shipment could have been expedited, as far as the time element was concerned, would you not?

A. Why not necessarily; no, sir; as far as the time element was concerned, but the idea simply was that we needed the material

within a certain period of time.

Q. Well what I mean is, if they had been able to save 24 hours in the delivery of that shipment, that is, if they had been able to cut the time-involved down that much, it would have helped out just that much, would it not?

A. Well—

Q. That is true, is it not?

A. Yes.

Q. And you would not raise any objection if the Pennsylvania. Railroad were to expedite the service on a shipment of that sort, would you?

A. Not necessarily, but-

Q. I mean, you would not have any objection, if the Pennsylvania Railroad could improve that service, would you?

/A. How!

Q. In expediting it? A. In what manner?

Q. By cutting down the time of delivery, and giving you a shorter delivery—or a quicker delivery.

A. Welle you say, a shorter delivery.

Q. Yes.

A. How would we anticipate a shorter delivery?

Q. Well, I am just asking you—

Mr. BARKELL. Just answer the question, Mr. Witness.

Mr. Eggers. Yes; that question can be answered readily enough.

By Mr. HARRY YOCKEY:

Q. What is your answer?

A. You asked me if we would have any objection?

Q. Yes.

A. Why, no, sir; I don't think that we would have any objection to that being done, if it could be done.

Q. Well, it would be beneficial to your business, would it not!

A. (No answer.)

Q. You testified that the thing that you are interested in, is in getting a quick delivery, did you not?

A. Very much so.

Q. Well, then, if the Pennsylvania Railroad was able to shorten the time of its service to you, no matter from what point it might be, that would serve the convenience of your busi-

699 ness, would it not?

A. Not if you could only improve the service by a matter of 24 hours, it wouldn't; no, sir; where the truck lines can get the shipments into Sturgis in a day's time.

Q. I am not talking about any truck lines, Mr. Witness.

Mr. Des Roches. Oh now, just a moment, counsel. I submit, if the Board please, the witness should be given an opportunity to complete his answer.

Mr. HARRY YOCKEY. I thought he had.

Mr. Des Roches. I think you interrupted him:

Mr. HARRY YOCKEY. All I am trying to do is get an answer to my question, and my question was with respect to the Pennsylvania Railroad.

Mr. BARKELL. Repeat the question.

Mr. HARRY YOCKEY. All right.

By Mr. HARRY YOCKEY:

Q. I am just asking you now, Mr. Witness, with regard to the service of the Pennsylvania Railroad, and not any truck line, and my question is this: If the Pennsylvania Railroad can improve its service to you by giving you a quicker delivery, that would be an advantage to you, would it not?

A. Absolutely.

Q. All right. That answers that question.

A. It would, absolutely.

Q. Well now, in the question that was asked you regarding your opinion, as to the service of the truck lines, there
was involved the question—or the assumption of a knowledge upon your part of what this proposed service by the Pennsylvania Railroad is, in connection with the Willett Company.

A. Yes.

Q. Now, what is your understanding, Mr. Witness, as to how

that will affect your particular town of Sturgis, Michigan!

A. Well, my understanding of what is being proposed here is that the Pennsylvania Railroad wishes to install a truck service between—I believe it is Fort Wayne, Indiana, and Mackinaw City, Michigan, for interstate movements only.

Q. All right. And was it explained to you as to how they were

going to operate that service?

A. Well, not—I wouldn't say that it has been explained fully to me as yet, no, sir.

Q. Is it your understanding that it is going to be an independent truck service?

A. Not necessarily.

Q. Separate and distinct from the railroad?

A. Not necessarily; no, sir.

Q. Well, then, what is your understanding?

A. My understanding was—and is—that the truck line that is going to render the service is to be owned by the Pennsylvania Railroad.

Q. And how is the service going to be rendered, as you understand it?

A. (No answer.)

- Q. Take for instance a shipment coming to you at Sturgis from Berne, Indiana, today. Was it explained to you as to how that service was going to be rendered, in connection with this truck line!
 - A. Only in one way.

Q. What was that?

A. Well, if Berne, Indiana, was off of the Pennsylvania line, the truck would leave your route—I mean, the route up and down the Pennsylvania Railroad——

Q. Well, did you think-

Mr. CLARDY. Just a moment.

A. ——to either deliver or pick up——

Mr. Eggers. Let him finish his answer.

Mr. HARRY YOCKEY. I beg your pardon.

A. —either to deliver or pick up freight which is to be drawn over the Pennsylvania line.

By Mr. HARRY YOCKEY:

Q. Have you finished your answer?

A. Yes, sir.

Q. Well did you think the Pennsylvania Railroad was endeavoring to serve you by truck all the way from Berne, Indiana, into Sturgis, Michigan?

A. Well, that I couldn't say, because I didn't even question

that. I don't know.

702 Q. Well, then let me give this explanation to you, Mr. Witness, as to what the service that is proposed here really is.

A. I would like to know.

Q. The service that is proposed is this, that if a shipment, an interstate shipment, we will say, came in from Berne, Indiana, to Fort Wayne, no matter how it might come into Fort Wayne, instead of sending that shipment by rail from Fort Wayne north, and having it delayed 24 hours in Fort Wayne, that 24 hours is going to be saved by sending that shipment by a truck of the Willett Company from Fort Wayne, to Sturgis. That is the service that is proposed.

A. I see. .

Q. Now then, with that explanation in mind, you would not have any objection to that service, would you!

A. Not as long as the movement was coming in by rail, no.

sir, I wouldn't have any objection.

Q. Well, no: . I mean, Mr. Witness, if the shipment came by rail into Fort Wayne. Let us take, for example, a shipment from New York; say that some customer makes a shipment to you from New York, and that shipment comes by rail into Fort Wayne, and then, instead of sending it on by rail from there to Sturgis, and having a delay of 24 hours at Fort Wayne, the Pennsylvania Railroad would install the service that is proposed here, namely, that of

having that shipment transferred to a truck at Fort Wayne of the Willett Company, and carried on that truck to your

place of business at Sturgis, Michigan, thereby saving you a delay of 24 hours at Fort Wayne. Now, I say, if that were the service, you would not have any objection to that service, would you?

A. Why, no, sir, not, as I say, as long as it was routed over the railroad into Fort Wayne, and you could improve that service by 24 hours.

Q. That is what the evidence in this case shows that we are trying to do.

A. All right.

Q. And that service would not in any way affect your bisiness, except beneficially, would it?

A. No.

Q. All right.

A. But what I am still trying to point out to you is, Mr. At-

torney, that it must be a quicker service than 24 hours.

Q. Well, but I mean, if the service was expedited to the extent of saving 24 hours, that would benefit you to the extent of that 24 hours, would it not?

A. Yes.

Q. It would benefit your business to the extent of 24 hours.

A. Naturally; yes.:

Mr. HARRY YOCKEY. Now, just a moment, please. Mr. BARKELL. Are there any further questions?

Mr. HARRY YOCKEY. Will your Honor indulge me for just a moment here. We may be able to save some time. 704

By Mr. HARRY YOCKEY:

Q. You ship from Sturgis, do you not?

A. Outbound?

Q. Yes.

A. Oh, ves.

Mr. HARRY YOCKEY. I think that is all.

Mr. BARKELL. Are there any further questions of this witness?

Mr. EGGERS. Yes:

By Mr. EGGERS:

Q. Just so that we clearly understand your testimony, Mr. Witness, as far as this application here is concerned, you are interested as far as interstate commerce is concerned, only in movements from Berne, Indiana—or rather, I should say, between Berne, Indiana, and Sturgis, Michigan.

A. Yes.

Q. Is that correct, now?

A. Yes, sir.

Q. And other than that, if I understood your former testimony of the contection of the contection of the content of the conten

A. That is right.

Q. I mean, as far as interstate commerce is concerned.

A. Yes.

Q. That is correct, is it?

705 A. Yes, sir.

Q. All right. Now, then, how often do you have any occasion at the present time to use transportation service into or out of Berne. Indiana, into or out of Sturgis, Michigan?

A. Between Berne and Sturgis?

Q. Yes.

A. Perhaps once a month.

Q. Once a month?

A. Yes.

*Q. What is the volume?

A. Carload.

Q. Carload !

A. Yes.

Mr. EGGERS. All right. I believe those are all of the questions that I have.

Mr. BARKELL. Are there any further questions of the witness?

Mr. HARRY YOCKEY. May I just ask the witness one other question, if your Honor please, regarding that particular shipment from Berne.

By Mr. HARRY YOCKEY:

Q. Was that a carload shipment-

A. Yes.

Q. Or a less-than-carload shipment?

A. That was a carload shipment.

Mr. HARRY YOCKEY. All right.

706 Mr. EGGERS, Just one more question.

By Mr. Eggens:

Q. Do you use the railroad company to handle all of those shipments?

A. Yes.

Mr. EGGERS. All right.

Mr. BARKELL. Mr. Clardy.

Mr. CLARDY. Just one or two questions.

Redirect examination by Mr. CLARDY:

Q. Witness, prior to the outbreak of the war, the the situation of your company there at Sturgis, with regard both to in-bound and out-bound movements, was a great deal different, as compared with the present time, was it not?

A. Very much so; yes, sir.

Q. So that presently, as you have indicated, your need for service, so far as this present application is concerned, is a great deal less than it was prior to the outbreak of the war!

A. Yes.

Mr. CLARDY. That is all.

Mr. BARKELL. Is there anything further?

Mr. CLARDY. Oh, yes, your Honor. I beg your pardon. There is another question.

By Mr. CLARDY:

Q. Witness, you started to answer a question put to you by Mr. Yockey a moment ago here, and you were either cut off, or for some other reason, you did not finish your answer. The question was asked of you as to whether or not a 24-hour

or improvement in service would be of any advantage to you,

that is, if the railroad improved its service by 24 hours. You started to answer that question, and you began to say something to the effect that if they could only improve the service by 24 hours—and then, as I recall it, you stopped. Do you recall that answer?

A. Yes.

Q. Would you just continue on from where you left off, now, with what you had in mind, so that the record may be complete?

A. Yes, sir. What I was going to say was, that if they can only improve their service by a matter of 24 hours over what they are giving now over that short distance, it isn't going to help us very much, although I'will have to admit, of course, that 24 hours is 24 hours—as far as helping us is concerned.

Q. At the present time are you receiving any shipments by

truck from Berne, Indiana?

A. No.

Q. That is a distance of about how many miles, from Berne, Indiana, to Sturgis, Michigan?

A. I would say, about 90.

Mr. CLARDY. That is all.

Mr. BARKELL. Mr. Yockey?

Mr. Yockey. I would just like to clear up one thing with the witness, please.

Re-cross-examination by Mr. HARRY YOCKEY:

708 Q. Mr. Witness, that particular shipment that you referred to, that took seven days, as you say, to get from Berne, Indiana, to Sturgis, Michigan, was a carload shipment, was it?

A. Yes, sir.

Q. I would like to explain to you further in connection with this proposed service, that there is no intention of attempting to improve that particular carload service for you.

A. I see.

Q. So that the saving of 24 hours that we were talking about, would not be involved in connection with carload shipments.

A. Just less-than-carload?

Q. Just in connection with less-than-carload shipments.

A. I see.

Q. And as I understand it, you are not receiving any less-thancarload shipments by rail at the present time, are you?

A. No.

Q. None at all.

A. No. sir.

Mr. HARRY YOCKEY. That is all.

Mr. BARKELL. Is that all?

Mr. CLARDY. Nothing further.

Mr. BARKELL. If there are no further questions, the witness is excused.

(Witness excused.)

Mr. BARKELL. Call your next.

709 Mr. CLARDY. Mr. Nyman.

E. O. Nyman was sworn and testified as follows:

Direct examination by Mr. CLARDY:

Q. Your name, Witness.

A. E. O. Nyman.

Q. Where do you live?

A. Petoskey, Michigan.

Q. I believe that you are associated with a business concernin that town, are you?

A. Yes. ·

Q. What is the name of that concern?

A. Petoskey Portland Cement Company.

Q. In addition to your connection with that concern, I believe that you occupy some official position in the community; is that correct?

A. Yes.

Q. What is that?

- A: I am councilman, and also acting mayor at the present time.
- Q. Now, Witness, would you tell us the nature of the business of the company by which you are employed.

A. Cement manufacturing.

Q. And does your company have occasion to both ship and receive merchandise?

A. Yes.

710 Q. In connection with the in-bound movements, what commodities are involved?

A. Well-

- Q. What do you receive?
- A. Repairs, machinery, and the like of that.

Q. Bags ?

A. Yes.

Q. And do you receive those both from points in Michigan, and from points outside the state of Michigan?

A. Yes.

Q. Now, in connection with the out-bound movements of your company, what commodity—or what commodities do you ship?

A. Oh, as far as out-bound movements are concerned, we ship practically nothing by common carrier truck.

Q. Practically all of your out-bound movement is cement, is it?

A. Yes.

Q. Moving-

A. And stone.

Q. Pardon me?

A. Cement and stone.

Q. Yes. Moving principally in carload lots?

- A. Moving in carload lots; yes, sir; and also by commodity trucks.
 - Q. By that do you mean truckload as well as carload?
 A. Yes.

711 Q. You also ship by water, I believe; is that correct?
A. Well; yes, sir. That is in bulk to our warehouses.

Q. Now, in connection with your in-bound movements in particular, Witness, what motor carrier is furnishing you that service—or what motor carriers on the less-than-truckload quantities that you receive?

A. Parker Motor Freight.

Q. How long has that company been serving you?

A. I would say between 10 and 15 years.

Q. And has that company uniformly given you good service over that period of time!

A. Yes.

Q. Now, Witness, I believe that we briefly explained to you this morning the fact that the Pennsylvania Railroad Company is seeking the right under this application to have this applicant inaugurate a less-than-truckload operation by trucks that would come into your town.

A. Yes.

Q. You recall our discussion in that connection, do you?

A. Yes, sir.

Q. At the present time, are you receiving any shipments by rail in-bound at your plant?

A. Some.

Q. Are you receiving anything in-bound that comes in from the south, from points outside the state of Michigan?

712 A. Yes. .

Q. From where?

A. Chicago, Detroit, and Cleveland.

Q. Are those shipments being presently handled primarily by motor vehicle?

A. Not altogether; no.

Q. To what extent?

A. I would say about 75 percent,-

Q. How does the service, as to the time element involved, between, say, Chicago and your town of Petoskey, Michigan, talking now about the truck service, compare with the all-rail service?

A. Truck versus rail?

Q. Yes, sir.

A. Well, I would say that there would be probably a couple of days saving in the time required to get the stuff in.

Q. By truck, do you mean &

A. Yes, sir.

Q. Now, The Pennsylvania Railroad Company here is trying to show, or at least it is claiming that if this service is permitted to be inaugurated, there will be a saving of time at some points of from 24 hours to 48 hours. As to how much will be involved here, the testimony, if I recall it correctly, is not very clear, but I think it is approximately 24 hours. In any event, let us assume.

for the purpose of my question, that they are going to im-713 prove their service by the maximum saving of 48 hours in connection with movements from Chicago. Would that still in any way be an improvement over the present motor-carrier service that you are now receiving, as far as the time element is concerned?

A. No.

Q. Do you have occasion to come into contact with the other shippers and receivers of freight at your town, or the majority of them, at least?

A. Yes; occasionally.

Q. Are there many other large shippers and receivers of freight

in your community?

A. Well, as far as manufacturing plants are concerned, there are two other manufacturing plants located in Petoskey in addition to our own.

Q. What are they?

A. There is the Michigan Maple Block Company, and the Michigan Tanning & Extract Company. Of course, there are other receivers of freight, such as retail stores, and the like of that, that I assume in the aggregate receive quite a volume of freight:

Q. Yes. However, the other two manufacturing companies that you have just named, in addition to your own, are the principal shippers and receivers of freight at Petoskey, are they not?

A. I would say so; yes, sir.

Q. Now, as far as the out-bound movement is concerned, do you ever have occasion to ship less-than-truckload quantities of your product?

A. Very, very seldom.

Q. When it does move that way, that is, in less-than-truckload

quantities, does it move by truck, however?

- A. Well, no sir; I don't know that we have ever shipped anything less-than-truckload out-bound by truck, except just very occasionally, and it is very seldom, on account of the cost of the trucking being too high to ship less-than-carload—or rather, I mean to say, less-than-truckload. Therefore, it is very, very seldom done.
- Q. If there were such a shipment, then, I take it that it would be to some point relatively close by. Is that correct?

A. Yes.

Q. Where the transportation charges for handling the shipment would be relatively small?

A. Yes.

Q. Is that because of the competitive situation in the cement field?

A. Yes, sir.

Q. Then, would it be true that there would rarely, if ever, be any out-bound interstate movement of your manufactured product?

A. There would not be by truck.

Q. That is what I mean.

A. No.

Q. Or by rail either.

715 A. Less-carload, I take it, you mean?

Q. Yes.

A. No, sir; not by rail either.

Q. Now, Witness, in addition to Parker Motor Freight, do you have any other common motor carrier that is presently serving you?

A. Do you mean, in connection with less-than-carload movements—or less than truckload movements?

Q. In any quantity.

A. Well, yes, sir; we do have a truck line that carries our commodity on a truckload basis.

By Mr. EGGERS:

Q. Is that a contract carrier?

A. Yes.

Q. Is that the operation that you referred to a moment ago, when you spoke of your commodity moving in contract trucks?

A. Yes.

By Mr. CLARDY:

Q. What line is that?

A. That is George F. Alger Company of Detroit.

Q/ Handling both interstate and intrastate movements for your

A. Intrastate; no interstate.

Q. I see. Is there any other truck line that is serving you at the present time?

A. No.

Q. Is the service which Parker Motor Freight is presently rendering you, entirely adequate to meet the needs of your

716 company, so far as its trucking service is concerned?

A. Yes.

Mr. CLARDY. You may inquire.

Mr. Barkell. Cross examine.

Cross-examination by Mr. HARRY YOCKEY:

Q. Mr. Witness, did I correctly understand you to testify that at the present time you are receiving quicker service, by two days, by truck, than you are by rail from interstate points?

A. Yes.

Q. Why are you using the trucks in preference to the rail?

A. Because we get the shorter service.

· Q. Do you mean, the quicker service?

A. Yes, sir. Because we get the quicker service by truck than

we do by rail.

Q. Well, now, then, you do get some shipments by rail, that is, less-than-carload shipments by rail, do you not?

A. Yes.

Q. How frequently?

A. Oh, pretty nearly every day we will get in a shipment of some kind or other—especially our stuff from Milwaukee, Wisconsin, which is quite heavy material.

Q. How does that come in?

A. Pere Marquette.

Q. Through the Fort Wayne gateway?

717 A. Oh, no; that comes across the lake.

Q. Across the lake?

A. Yes; from Milwaukee.

Q. Well, now, you do have some shipments by rail that come through the Fort Wayne gateway, do you not?

A. Some, yes.

Q. By the Pennsylvania?

A. Well, not altogether; no, sir. We have some of it that comes in via the Pennsylvania, but it is mostly Pere Marquette, I would say. Most of our stuff comes in via the Pere Marquette, on account of the fact that we are located on the Pere Marquette there at Petoskey.

Q. But if the freight that came in, interstate, through the Fort Wayne gateway, could be improved 24 hours—that is, if the service, or the delivery time of that freight could be improved by 24 or 48 hours, that would be beneficial to your company, would it

not ?

A. Why, not necessarily so; I would not say so; no, sir; unless it was an improvement over what the truck lines are doing at the

present time-or what they could do.

Q. I am not asking you about what the truck lines are doing, or with relation to what the truck lines are doing. I am just talking about the business that is being transported in to you by rail.

A. That is what I am talking about.

Q. Well, now, my question is, if that particular rail business could be expedited, or the time of delivery shortened, by from 24 to 48 hours, that would be beneficial to you—or to your company, would it not?

A. Well, yes, sir; but it would be only beneficial to that ex-

tent, from 24 to 48 hours.

Q. That is what I say.

A. Yes.

Q. No matter whether it is cut off the time of handling by truck line, or by the rail line,

A. Yes.

Q. Well, now, then, has it been explained to you that that is what the Pennsylvania Railroad Is trying to do here; that it is trying to expedite by 24 to 48 hours the movement of freight in its rail service?

A. Well-

Q. Was that explained to you?

Mr. BARKELL. Just answer the question.

A. No.

By Mr. HARRY YOCKEY:

Q. Well, now, if that is the fact, Mr. Witness, you would not have any objection to that particular service, would you-or to that improvement, rather, in the service?

A. Well, the thing that I have in mind is just this: I can't see where they are going to improve it any, to improve the service any, by having to take it out of the car and lead

it on to the truck.

Q. No.

Mr. Barkell. Just answer the question. Mr. Witness.

A. What is the question again?

By Mr. HARRY YOCKEY:

Q. I say, if they do that, you would not have any objection to that improvement in the service, would you—if they can shorten your service by from 24 to 48 hours?

A. 24 to 48 hours?

Q. Yes, sir.

A. Well, they would have to shorten the service a whole lot

more than that, I would say, in order to help us any.

Q. Well, but I mean, if they did do that, to that extent, at least, it would be beneficial to your company in its business, would it not

A. Well-+

. Q. To that extent, that is.

A. Slightly.

Q. All right.

A. But not very much.

Q. That would put it on a parity with the service that you are getting from the trucks, would it not?

A. (No answer.)

Q. You say that the truck service at the present time is only beating the rail service by a couple of days.

Mr. CLARDY, "Only"?

A. Well, now, I don't know about that, because, of course, there is a delivery after the shipment reaches destination-

By Mr. HARRY YOCKEY:

Q. I am not asking you about that, now, Witness. The only thing that I am asking you about now is as to whether or not, if the railroad, The Pennsylvania Railroad, does cut off from one to two-days in the time of delivery of the shipments to your place of business at Petoskey, Michigan, on interstate shipments, that is that would be beneficial to your business, and you would not . have any objection to that; that is correct, is it not?

A. Well, what I am trying to tell you is, that it would not help

us any over the service that we are getting now.

Q. But it would help you, or be beneficial to that extent, at least, as far as railroad shipments are concerned, would it not!

A. Well, now, I may be a little bit dumb about this whole thing, sir, but I cannot see where it would help us any.

Q. Well, now-

Mr. Eggers. Just a moment, Mr. Yockey. It appears to me, at least, that these questions are all very simple, and are susceptible of being answered by yes or no. I do not see why we have to have a lot of hedging around here.

Mr. CLARDY, Your Honor-

Mr. Eggens. Just a moment, now, Mr. Clardy. What I am interested in right now is in getting a direct afiswer to some of these questions, that can very readily be answered by a direct answer. We have been spending a lot of time here, and getting no answer at all to questions that can be answered by yes onno. It appears to me, at least, that there has been a lot of hedging here, and I just want to say that. I have no sympathy with that sort of procedure at all.

Mr. CLARDY. Your Honor, I think your Honor is missing the import of what the witness is trying to tell you. What this witness, in substance has said, is this: "Why, sure, if the Bennsylvania Railroad did decrease the time from 24 to 48 hours, it would naturally speed up the service that much," but he has also attempted to say something else, following that—and I think that is the important point, so far as all of this kind of testimony is concerned—and that is this, that even if they did speed up the service to that extent, it would not help him or his company a bit, as against the service that is presently available.

Mr. Eggers. All right.

Mr. CLARDY. Now, that is what the witness has said, and I. submit that there has not been any hedging about that at all.

Mr. EGGERS, That is all right.. If you have anything further that you want to develop from the with you may bring it out

on redirect examination.

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Mr. BARKELL, Proceed.

722 Mr. HARRY YOCKEY. I have no further questions to ask this witness, your Honor.

Mr. BARKELL. Is there any redirect?

Mr. CLARDY. Yes.

Redirect examination by Mr. CLARDY:

Q. Witness, did I correctly state just now to the Joint Board member, the substance of what you have been trying to say here!

A. You did.

Q. In other words, if I correctly understand your testimony, it would not make any particular difference to your company how much The Pennsylvania Railroad speeded up its service; if they did not go any further than they have indicated here, they still a would not be giving you any better service—

A. No.

Q. —as compared with what you can presently get, would they!

A. That is right.

By Mr. BARKELL:

Q. Did I correctly understand you to say, Mr. Witness, that your company uses rail service?

A. Yes; some.

Q. Well, now, if the rail service was improved to the extent of 48 hours, would that be beneficial to your company, or not?

A: Yes; absolutely it would.

Mr. BARKELL. Well, now, that is the answer to the question. I do not see why we had to take so long in getting it.

723 Mr. CLARDY. Yes, that answers it.

Mr. Lindstrand. I would like to ask a question or two, your Honor.

Mr. BARKELL. Go ahead.

Recross examination by Mr. LINDSTRAND;

Q. Mr. Witness, is the plant of the Petoskey Portland Cement Company located within the corporate limits of Petoskey!

A. No.

Q. Is it in a community, or at a location commonly known as Lansing!

A. Yes.

Q. How many miles is that from Petoskey?

A. Oh, something over three miles.

Q. Is that on the Pere Marquette Railroad?

A. Yes.

Q. And the Pere Marquette Railroad is the only railroad that serves that plant, is it?

A. Yes.

Mr. LINDSTRAND. That is all.

Mr. BARKELL. Is there anything further?

Redirect examination by Mr. CLARDY:

Q. Now, Witness, you started to say something else a moment ago, that you did not complete, and that I want to find out about. You started to say something about delivery after a shipment gets to your town. Do you recall that?

A. Yes.

.Q. What did you mean by that?

- A. Well, what I meant by that was this, that the trucks at the present time deliver our merchandise to the plant, whereas, we have to pick it up from the railroad, if it comes in by rail.
- Q. In other words, then even if the railroad company were to give you a 24 to 48 hour faster rail service, there still would be an advantage with the trucks?

A. Yes.

Q. In delivering the shipments to you?

A. That is right.

Mr. HARRY YOCKEY. Now, just a moment. I want to object to that, if the Joint Board please. The witness got his answer in before I had an opportunity to interpose my objection.

Mr. BARKELL. State your objection.

Mr. HARRY YOCKEY. That is not involved in this proceeding in any way whatever, a comparison as between the rail service and the truck service. That has no bearing on the issue here at all. All that is involved here is a question of improving our services.

Mr. Clarry. Now, your Honors, I do not intend for one moment to be drawn off by counsel into that morass, and that is why I stated what I did to your Honors a few moments ago here,—if you will pardon me. The whole point, the whole issue in 725 this case, from our standpoint, is precisely that, and the

rails are attempting to camouflage the issue, as they have in the other cases, by making it appear that in order to get an extension, they need merely to say that they are doing a lousy job now, but they can do a better one if they get the authority that they are asking for here. Now, our point is that the testimony which this witness has given is the only real testimony that has thus far been offered in this case by a shipper witness. The fact that the railroad can do better than it has in the past is neither material nor competent here.

Mr. BARKELL. Well, we are not going to argue that question now. The question has been answered, and the answer may stand.

Mr. CLARDY. Thank you. That is all.

Mr. Barkell. Is there anything further ? &

Mr. HARRY YOCKEY. That is all.

Mr. Barkell. If there are no further questions, the witness is excused.

(Witness excused.)

Mr. BARKELL. Call your next.

Mr. CLARDY. Mr. Schmitt.

F. J. SCHMITT, Jr., was sworn and testified as follows:

Direct examination by Mr. CLARDY:

Q. Your name, Witness.

726 A. F. J. Schmitt, Jr.

Q. Where do you live?

A. Petoskey, Michigan.

Q. The same town as the last witness?

A. Yes.

Q. What is the business with which you are connected?

A. Michigan Maple Block Company.

Q. That is one of the two other manufacturing companies at Petoskey, Michigan, that the last witness named, in addition to his own, I believe.

A. Yes.

Q. Was he also correct in his statement that your company is one of the three large manufacturers located at that point?

A. Yes, sir.

Q. Your company has been in business there at Petoskey for approximately how many years?

A. 40 or 50.

Q. What is the product that is manufactured at shipped by your company?

A. Butcher blocks; die blocks; table tops; and flooring.

Q. Does that business entail the use of both truck and rail service for transportation?

A. Yes.

Q. Now, taking up first your in-bound movements; do you receive anything by either rail or truck in-bound, from points outside the state of Michigan?

A. Yes; both.

Q In the inbound movement, do you ever use rail service on less than carload shipments?

A. I believe some; yes.

Q. And do you use the trucks in that same movement!

A. Yes.

Q. The trucks handle, do I gather from your testimony, the predominant part of the business?

A. I believe they do on the less than carload; yes, sir. . .

Q. Do you receive shipments from such places as Chicago?

A. Yes.

Q. Indianapolis?

A. Chicago, Detroit, and Grand Rapids.

By Mr. EGGERS:

Q. Did you say Grand Rapids, Mr. Witness?

A. Yes.

Mr. Eggers. Let us restrict the testimony to interstate movements only.

Mr. BARKELL Yes.

Mr. Eggers. As much as possible.

Mr. CLARDY. I am merely laying a foundation, your Honor, to show what his business is.

Mr. Eggers. Detroit and Grand Rapids, and similar points, are

not what we are interested in here.

Mr. Clardy. But I want to show, your Honor, what percent of his business—

Mr. Eggens. Restrict it to interstate points, as much as you possibly can.

By Mr. CLARDY:

Q. What part of your business is interstate, Witness, as far as the inbound movement is concerned, and about what part of it is intrastate?

A. Well, now, that would be a pretty difficult question for me to answer. I don't have any figures here.

Q. Well, is the bulk of it, would you say, from points in the state of Michigan; or from points outside of Michigan; or is it about even?

A. Well, no, sir. I would say that the bulk of the business coming in, is from out of the state, points outside of the state.

- Q. All right. Now, further in connection with your inbound movement from points outside the state, is that principally truckload or less than truckload.
 - A. Most of it would be less than truckload.
- Q. Has the Parker Motor Freight been serving you in your inbound movement for some time?
 - A. Yes.
 - Q. For about how long?

A. Oh, since about 1929, or 1930.

Q. Has the service which that company has been giving you been satisfactory, so far as the transportation needs of your com-

729 X are concerned?

729 A. Yes.

Q. Now, you have been present here, and heard some of the discussion with the other witnesses, about the kind of service

that the railroad is proposing to have the applicant inaugurate here, have you not?

A. Yes.

Q. You understand, then, do you not, Witness, that it is proposed here to start a new truck service to be used in connection with less than truckload movements exclusively?

A. Yes.

Q. At the present time, taking your movements from Chicago, one of the points that you just named: you are presently getting an over-night truck service from that point, are you not?

A. Yes.

Q. Do you recall about how long it takes the rails to move a shipment from Chicago to your town?

A. No.

Q. A less than truckload shipment?

A. No, sir; I don't. I wouldn't be able to specify any particular time just offhand on that. However, I don't believe that we have ever received an over-night shipment. The reason that we like to use truck service as far as our inbound less than carload freight is concerned, is because if we want a part, for example, that is com-

ing over from Chicago, the truck leaves Chicago semetime after six o'clock in the evening, and we get that part either the next morning, or the next afternoon at approximately two o'clock. I don't believe that we have ever had service that fast by train—that is, by rail.

Q. Now, your company also makes shipments outbound, does it not, Witness?

A. Yes.

Q. What use are you making of both rail and truck service in that movement?

A. Why, I believe as far as tonnage is concerned—I take it that is what you mean—

Q. Yes.

A. —the rail gets the majority of it. However, we have approximately one truckload, I would say, leaving the plant every day.

Q. Is your rail movement confined primarily to carload shipments?

A. We have both.

Q. Both?

A. Yes, sir.

Q. In about what relationship-

A. Well-

Q. - or what percentage?

A: I wouldn't want to answer that question.

Q. Pardon me?

A. I mean, I wouldn't want to try to answer that ques-

731 tion, because I really don't know.

Q. Well, does the amount that is moving by carload, however, predominate?

A. I believe so; yes, sir.

By Mr. Eggers:

Q. Now, Mr. Witness, just to be sure that the record is straight, what you are talking about now is both interstate and intrastate?

A. Yes. ·

Q. Is that correct?

A. Yes.

Q. You are not restricting it to interstate, now?

A. No.

Mr. CLARDY. Well, now—— The WITNESS. Pardon me.

Mr. CLARDY. Yes.

The WITNESS. I just wanted to add, our shipments coming into and going out of Petoskey, in the state, that is, intrastate shipments, are very small, I would say. We ship all over the United States.

Mr. EGGERS. All right.

By Mr. CLARDY:

Q. So that the proportion of intrastate business in your outbound movements would be negligible, then, would it?

A. Yes.

Q. The majority being destined out of the state?

A. That is right.

732 Q. Now, I believe in that answer you were referring to rail movement.

A. Yes.

Q. Referring now to the movements by truck, do those also

go principally to points outside of the state?

A. I would say so, yes, sir. In other words, we maintain a warehouse in Chicago, and we get over-night service out of Petoskey; and naturally, being in the manufacturing business, we like to manufacture during the daytime, and then the truck leaves there every night at five occlock, and the next morning it is in Chicago.

Q. So that, then, Witness, no matter how much of an alleged improvement may be involved if this application is granted, unless you would be able to get a service better than next-morning into Chicago, there would not be any advantage to your company,

would there?

A. I cannot see how there would be.

Q. If the application should be granted, and the railroad company should succeed in giving you next-morning delivery out of Petoskey into Chicago, would that have any tendency to split the business that Parker Motor Freight is presently handling for you?

A. As I understand it—if I recall correctly—the railroad company is planning on having a truck out of Petoskey at around 10:30 in the morning.

733 Q. That is their present schedule.

A. Well, it would be much better for us, as far as we are concerned, to have a truck leaving Petoskey in the latter part of the day, and arriving at Chicago in the morning, due to the fact that we have ample time, then, to fabricate the merchandise, and get it ready for shipment that night.

Q. Is it the custom of your company to endeavor to fill its

orders on the same day that it receives them !

A. No.

Q. Or as nearly that as you can?

A. No, sir; it is absolutely impossible for us to do that, because we are too far behind as it is. When we get the merchandise made, however, then we want our customers to get it just as rapidly as possible.

Q. Yes. Is it true that the present operating schedules of Parker Motor Freight out of your town, have been meeting the

needs of your company?

A. Yes, sir; I should say they have. They have served us

excellently to the points that I have mentioned.

Q. Well, then, Witness, is there any present need, insofar as your company is concerned, for any additional truck service to or from those towns?

A. I don't believe so; no.

Q. Was the witness who just preceded you on the stand correct in saying that in addition to your company and his company, there is still one other manufacturing concern in your town?

A. Yes, sir; that is correct—the Michigan Tanning & Extract

Company. I believe he mentioned them.

Q: And those three concerns represent the bulk of the business that is handled into and out of Petoskey, would you say?

A. Yes.

Mr. Eccess. I am very suse that that is in the record at least two or three times, now.

Mr. BARKELL. Yes; it is in the record. I recall that a couple of times, anyway.

Mr. CLARDY. Well, I did not intend to repeat anything, your Honor. I did not recall having asked that before.

By Mr. CLARDY:

Q. At any rate, Witness, those three companies represent the bulk of the shipping requirements at your town; is that correct?

Mr. CLARDY. You may inquire.

Mr. BARKELL, Cross examine.

Cross examination by Mr. HARRY YOCKEY:

Q. I believe, Mr. Schmitt, that you stated you do use the service of The Pennsylvania Railroad to points other than Chicago.

A. Well, I don't recall whether I stated that specifically or not,

but that is the fact, ves, sir.

Q. That is, on out-bound shipments.

735 A. How?

Q. On out-bound shipments.

A. Oh. ves.

Q. To approximately how many points, over the entire country, would you say that your out-bound shipments go!

A. Well-

Q. Just generally?

A. Oh, the only way that I could answer that question would be to say that they go all over the country, and to some European countries also.

Q. Are there many of your outgoing shipments that are less-than-carload shipments?

A. Oh, ves.

Q. Now, referring to your inbound shipments coming in by The Pennsylvania Railroad in less than-carload quantities, interstate, do you have many of those coming in from points other than Chicago?

A. Some.

Q. You do have some?

A. Yes.

Q. Well, now, I take it, Mr. Witness, that you are using truck service at the present time to Chicago, by reason of the fact that the trucks are giving you a quicker delivery time than you are obtaining by rail; is that correct?

A. Yes.

736. Q. Is that one of the factors, at least?

A. Yes.

Q: I mean, that is not all of them. There may be others, but at least that is one of them, is it not?

A. Yes.

Q. Well, now, then, as to those points other than Chicago where you are shipping by The Pennsylvania Railroad, less-than-carload freight, if the railroad can, by instituting a truck service part of the way, shorten the delivery time at destination of those railroad shipments, that would be beneficial to your business, would it not?

A. I am sorry, but that was kind of a long question, and I don't believe I just follow you there. Would you mind repeating it,

please.

Mr. HARRY YOCKEY. Will you read it Mr. Reporter.

(Question read.)

By Mr. HARRY YOCKEY:

Q. That is, if the railroad, by having the applicant institute this service, can shorten the delivery time of those shipments by from 24 to 48 hours, that would be beneficial to your business, would it not?

A. If they could make a direct delivery to our plant.

Q. Well

A. You see, the only thing is-

Q. Regardless of how-

Mr. CLARDY. Just a moment. Let the witness finish.

Mr. BARKELL Go ahead and finish your answer.

A. I was just going to add, the only thing is, that we do not care to have our merchandise transferred too many times, you understand; due to the fact, principally, that it is pretty heavy merchandise.

By Mr. HARRY YOCKEY:

Q. But on the other hand, if they can overcome the normal difficulties that may arise, and they can shorten the time from 24 to 48 hours, that particular phase would be beneficial to your business, would it not?

A. Naturally so.

Mr. CLARDY. Just a moment, Witness. Having in mind the fact that at the last hearing, you overruled my objection to that kind of testimony, I would like to have the record clearly show now the understanding that there is to be a continuing objection to all that sort of testimony, without repetition, so as not to burden the record.

Mr. BARKELL All right.

Mr. CLARDY. I am just reminding you of that now.

Mr. BARKELL. It is so understood.

Mr. CEARDY. Just so that somebody reading the record after it had gotten cold, will not wonder why I did not say anything. Mr. BARKELL. It will be so understood.

By Mr. HARRY YOCKEY:

Q. Now, then, the same thing would be true, would it not, as far as your in-bound shipments are concerned! It would be

738 beneficial to your company if the Pennsylvania Railroad, handling interstate shipments into your plant, could expedite the movement of those shipments by from 24 to 48 hours?

A. Our shipments in-

Q. Now, just a moment, Mr. Witness. Just answer my question first, please, and then make your explanation.

A. Why, naturally, if we could get them quicker.

Q. That is what I say.

A. Naturally, it would benefit us.

Q. Yes.

A. But you should let me have an opportunity to finish my question—or rather, I mean to say, to finish my answer.

Q. Certainly.

A. I was going to say that our in-bound movement from points outside of the state of Michigan is not a very great deal, as far as less-than-carload movement is concerned.

Q. But then, to whatever extent it is, it would benefit those

particular shipments, would it not?

A. Well, it would, yes-

Q. Yes.

A. If they could beat the truck.

Q. Well, now, I mean, as far as rail shipments are concerned. That is all I am talking about. I mean, just taking the rail service itself, expediting the service over the rail, plus the rail-

truck service: if they can expedite that, it will bene-

739 fit your business, will it not?

A. Sure.

Q. All right.

A. If they can get it there quicker.

Q. That is what I say.

A. Naturally.

Mr. HARRY YOCKEY. All right. That is all.

Mr. LANDSTRAND. Just a question or two.

By Mr. LINDSTRAND:

Q. Mr. Witness, are there any less-than-carload shipments going to government camps?

A. Of ours?

Q. Yes.

A. Yes, sir; all over the country.

Q. And does the government specify the routing in connection with those less-than-carload shipments?

A. Well, now, let me get your question straight. Does the government specify the routing

Q. As far as the origin point is concerned, they do specify the

routing, do they not?

A. How is that again?

Q. I say, they do specify the routing from the original point, do they not

A. Why, yes, sir; that is correct, on the merchandise that is on

direct contract with the government.

Q. Do you pay the freight charges, or does the government pay the freight charges?

A. Both.

Q. Both ways?

A. Yes.

Q. Your plant at Petoskey, Michigan, is located on a Pennsylvania Railroad siding, is it not?

A. Yes.

Q. Do you have an interest in any truck line?

A. No.

Q. You have not?

A. No.

Mr. LINDSTRAND. That is all.

Mr. BARKEIA. Mr. Clardy?

Redirect examination by Mr. CLARDY:

Q. Witness, you do not have any interest in any railroad either, do you?

A. No.

Mr. CLARDY. That is all.

Mr. Des Roches. I have a question or two, if the Board please.

By Mr. Des Roches;

Q: Are you the prime contractor?

A. (No answer.) ..

Mr. BARKELL. How is that again?

Mr. CLARDY. They are the shipper.

The WITNESS · I didn't get that.

741 By Mr. DES ROCHES:

Q. Are you the prime contractor, as far as the United States government is concerned?

A. Yes.

Q. What do you manufacture direct for the United States

government?

A. Oh, butcher blocks and table tops, that are used in the kitchens, in the cantonments, and that are also used in powder plants, arsenals, and airplane plants.

Q. And in the case of the balance of your work, that is not being done direct for the government, you are working as a subcontractor to a prime contractor; is that correct?

A. Yes.

Q. What percentage of the work that you are doing at the present time is as a subcontractor, would you say!

A. Well, at a guess-

Q. Approximately.

A. I would say from about 50 per cent to 60 per cent of what we are doing right now, is being done as a prime contractor.

Q 50 to 60 per cent?

A. Yes, sir.

Q. You have complete control over the routing in connection with all of your subcontracting work, have you not?

A. Yes.

Q. Now, as I understand the situation, your transportation service at the present time is satisfactory; is that correct?

742 A, If you will pardon me-

Q. Sir?

A. Going back to my last answer, or rather, to my previous answer, I would say, we have in most instances.

Q. Control?

A. Yes, sir. Sometimes, however, the customer will send us a routing. I just wanted to correct myself on that, when I answered "Yes" to your question; because we do not always have complete control.

Q. Sometimes the customer will direct the routing.

A. Yes.

Q: As I understand the situation, however, as far as transportation service is concerned, you are perfectly satisfied with the transportation service which is available at the present time; is that correct?

A. Yes.

Q. And you are not interested in getting any additional trans-

portation service, are you?

A. Well, of course, it would be perfectly satisfactory, as far as that is concerned, to have additional service. That is, if we could have a truck out of the plant every day, why, we would like that—or rather, I mean to say—I beg your pardon—every hour; that would be all right, but that is impossible.

Q: You do not expect that?

A. No, sir; we do not. As I say, under the arrangement that we have there at the present time, we do our manufacturing during the daytime; then what merchandise we have going, we will say, to Marshall, Michigan, or to Grand Rapids, or to Chicago, will get there the next morning. We ship

it out at five o'clock in the afternoon, and it is there by the next morning. Now, as far as the railroad company is concerned, it has never yet been able to give us service like that.

Q. Well, let us put it this way, Mr. Witness: You have no complaint to register about the existing transportation service, have you?

A. No sir; none whatever.

Mr. Dr. Roches. That is all.

Mr. BARKELL Is that all?

Mr. CLARDY. Just a further question or two, please.

By Mr. CLARDY:

Q. Witness, the testimony which has thus far been presented, dealing with the schedule proposed by the railroad company, if this authority is granted, as shown by their witnesses, or one of their witnesses—I have forgotten now whether it was Mr. Christie, or the other one—indicates that they are going to leave Petoskey around 10 o'clock in the morning, and they are basing their contentions thus far in the case, with respect to some alleged or claimed saving, upon a schedule leaving there at that hour. Now, would that effect any saving to you, so far as your over-all trans-

portation needs are concerned, if their trucks should leave

744 your town at that particular hour?

A. Why, as I stated before, we would like to have our shipments go out the latter part of the afternoon.

Mr. EGGERS. You have been over that before with the witness,

Mr. Clardy.

Mr. Barkell. Yes; you have been all over that at least once. I recall that very clearly.

Mr. HARRY YOCKEY. Yes; he has.

Mr. CLARDY. I do not recall addressing that particular question to the witness, your Honor.

Mr. Barkell. I believe he has answered several questions to that effect.

Mr. Eggers. Or, at least, he has made that statement.

Mr. HARRY YOCKEY: In any event, the answer is the same.

Mr. BARKELL. I am sure that is in the record several times, now. Mr. HARRY YOCKEY. We are never going to get through here,

if there is this constant repetition.

Mr. Clardy. As I say, I do not recall that particular question.

Mr. Barkell. Adl right, then; answer it once more, and then
let us dispense with the repetition as much as possible.

A. Well, now, let me see. Did you ask me as to whether or not it would benefit us—

By Mr. CLARDY:

745 Q. Yes; if the truck left at 10 o'clock in the morning, instead of at the late hour in the afternoon.

A. No.

Q. All right. Now, Witness, great stress has been laid by the applicant on the fact that this is going to involve some kind of saving to the railroad, so far as the through over-all time is concerned.

Mr. HARRY YOCKEY. Just a moment.

By Mr. CLARDY:

Q. (Continuing:) Would it make-

Mr. HARRY YOCKEY. Just a moment, please, counsel. Give me a chance to interpose my objection, please. I object to the statement of Mr. Clardy, if the Board please, on the ground that it is not a question at all; but merely a statement, and an argument. That is not a question at all; it is just merely a statement.

Mr. Clardy. Surely it is a statement, but nevertheless, it is a part of the question. It is preliminary to the question itself, so that he will clearly understand what it is that I am trying to get

at. Now, may I finish my question, your Honor!

Mr. BARKELL. Yes; I would like to know what the question is,

myself.

Mr. Clardy. Surely. I had only started it, when counsel interrupted.

Mr. BARKELL. Finish the question.

Mr. Clardy. How far did I get, please, Mr. Reporter? (Question read.)

746 By Mr. CLARDY:

Q. (Continuing.) Now my point, Witness, is this: Assuming that the railroad is going to use trucks from Petoskey to Cadillac, or some other point, where it will then transfer shipments to the rail, would it make any difference to you whether it was Parker Motor Freight that rendered the truck part of the operation, or the applicant herein, The Willett Company!

A. No. sir; not any at all.

Q. So far as you know, is there any factor that would enable The Willett Company to render you any better or faster service if this application is granted, than you could presently secure from Parker Motor Freight?

Mr. HARRY YOCKEY. Just a moment.

A. I don't believe so.

Mr. Barkell. Just a moment, Mr. Witness.

Mr. HARRY YOCKEY, Counsel is getting into a comparison, now, between The Willett Company and the Parker Motor Freight

Company, and this witness is certainly not qualified to make any comparison.

Mr. BARKELL. Oh, he may answer if he knows.

Mr. CLARDY. Surely.

Mr. HARRY YOCKEY. May I ask a preliminary question, then,

if the Board please, just at this point.

Mr. Des Roches. Oh, your Honors, I object to counsel cross-examining the witness at this time. If he has a question to ask, let him reserve it until cross-examination at the proper time.

Mr. BAKKELL. The witness may answer the question if he can.

Mr. EGGERS. I believe he did start to answer it.

Mr. CLARDY. Will you read the question, please.

(Question read.)

Mr. CLARDY. I might just add, having in mind, when you answer that question, the fact that their schedule calls for a 10 o'clock

a. m. departure time.

A. Well, the only way that I could answer that question would be to say that The Willett Company would have to have trucks—that could and would run faster than anybody else's trucks. But one truck can't run any faster than another, so what difference would it make who hauled it! That is about the only way that I can answer that question.

Mr. CLARDY. That is all, .

Mr. BARKELL. Are there any further questions of this witness!.

Mr. HARRY YOCKEY. Nothing further.

Mr. BARKELL If not, the witness may be excused.

(Witness excused.)

Mr. CLARDY. Shall-I proceed, your Honor?

Mr. BARKELL. No; we will take a recess at this time until 1:30 this afternoon.

(At 12 o'clock noon, recess until 1:30 p. m.)

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AFTERNOON SESSION

The hearing was resumed pursuant to recess, 1:30 p. m.

Mr. BARKEIL Come to order, please, gentlemen. Mr. De-Roches, I believe you have something to present.

Mr. Des Roches. Yes.

Mr. BARKELL. You may proceed.

Mr. Des Roches. Mr. Buck./

Mr. CH BLES P. BUCK was sworn and testified as follows:

Direct examination by Mr. Des Roches:

Q. Mr. Buck, will you give your full name to the Reported please.

A. Charles P. Buck.

Q. Where do you live?

A. Traverse City, Michigan.

Q. What is your business!

A. Industrial engineer.

Q. How long have you been an industrial engineer?

A. About 41 years.

By Mr. BARKELL:

Q. Your residence again, Mr. Buck?

A. Traverse City, Michigan.

Mr. BARKELL Proceed.

By Mr. DES ROCHES:

Q. Mr. Buck, how long have you lived in Traverse City, or in close proximity thereto?

A. Düring the last period, for five years.

Q. And prior to that time, for how long a period of time did you live in Traverse City?

A. Prior to 1912, for 33 years.

Q. How long have you been an industrial engineer?

A. Approximately 41 years.

Q. As an industrial engineer, have you been employed by any industrial company or companies in or around Traverse City, or the chamber of commerce of Traverse City!

A. Yes.

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Q. At various times?

A. Yes, sir.

Q. And for various purposes?

A. Yes.

Q. Were you employed at one time, Mr. Buck, by the chamber of commerce of the city of Traverse City to make a survey concerning transportation service?

A. I was.

Q. In the city of Traverse City, I mean.

A. Yes, sir; and surrounding territory.

Q. Well, now, Mr. Buck, when you refer to surrounding territory, just what do you mean, or what do you include in such surrounding territory?

A. The 13 counties from Manistee north to the straits, which are normally tributary to Traverse City retail and wholesale

50 businesses.

Q. Can you tell the Joint Board and the Commission the population of the city of Traverse City, Michigan, at the present time?

A. At the last census, 14,455.

Q. Can you give us the population of the adjoining counties also, which you included in the territory that your survey covered

A: According to the census of 1940, which is the last authentic

figure that I have, it was 143,000, approximately.

Q. By the way, that covers approximately how much territory in square miles; that is, how many square miles?

A. 6.612.

Q. 6,612 square miles?

A. Yes, sir.

Q. Now, are you familiar with the common motor carriers, private carriers, and limited common carriers, that are authorized to serve the city of Traverse City, Michigan, and the surrounding territory?

A. In general; ves.

Q. Approximately how many common motor carriers would you say are authorized to serve that city?

Q. Now, did I correctly understand you to say that you made a survey concerning the transportation facilities of that city?

. Q. Traverse City.

A. Yes.

Q. And that was some time ago?

Q. Approximately how long ago?

A. Well, the last survey was made complete two years ago.

Q. Is that what we might call a personal survey on your part!

A. Well, it was a personal survey to the extent that I made my own investigation, and checked the collected data.

Q. Were you requested by anybody, or by any agency, to make that survey, Mr. Buck?

A. Yes.

Q. By whom?

A. By the chamber of commerce of Traverse City, Michigan.

Q. I wish you would tell the Joint Board and the Commission what findings, if any, you arrived at as a result of that survey. .

Mr. HARRY YOCKEY.. Now, just a moment. I want to object, if the Board please, to any survey which this witness might have made. Nothing of that sort is involved in this proceeding, and it cannot possibly be. The only question involved here is the question of public convenience and necessity. That is my first ground of objection. In the second place, the question calls for an opinion on the part of the witness regarding conditions, and an opinion

of that sort would have utterly no bearing on the issue in this type of case. It is utterly irrelevant and immaterial. If

this man were a shipper, or if he bimself were interested

in some way, so that he would have direct knowledge, that might be one thing, but here, by the testimony of the witness himself, is a private investigation which he made, where we are not afforded the slightest opportunity to cross-examine anyone with whom he may have talked; we have no opportunity to meet them face to face. The question involved here is not a question that calls for a survey, or has anything to do with a survey. Furthermore, the period involved is too remote. This happened several years ago, and was just made complete, as the witness said, two years ago. We are in a time when conditions are changing very rapidly. They are changing right now. We just do not believe that the evidence now sought to be introduced is competent, relevant, or material.

Mr. DES ROCHES. May I be heard?

Mr. BARKELL. Go ahead.

Mr. Des Roches. Counsel speaks about this witness having talked to somebody. I am not asking him to testify to anything that is hearsay. I am simply asking him to give testimony upon this question, based upon a personal survey that he himself made. If there is any cross-examining to be done, this witness is the man to be cross-examined; and he can be cross-examined at length as to the extent of the survey; and the detail of the survey; the people he contacted; and what the results were, what his findings

were. Now, counsel states that the only question we are concerned with here is the question of public convenience and necessity. That is the very first time I have heard counsel make an admission of that sort during the entire progress of this proceeding. He has contended from the very start, and claimed from the very start, if I have understood him correctly, that that was a point that did not have to be established in this particular case. Now, he states that it must be established. I want to show through this witness that the territory which The Pennsylvania Railroad is proposing to serve here, or through this applicant, is being adequately served at the present time; and if this man on the basis of the survey that he himself conducted, can testify as to the adequacy or inadequacy of the transportation service in the territory, certainly that testimony is competent.

Mr. Harry Yockey. If the Board please, may I state just a word

further, before you rule? Mr. BARKELL, Yes.

Mr. HARRY YOCKELL Counsel is wholly mistaken in his last statement, because this record will show definitely that we have contended from the very start that the question of public convenience and necessity was the question that was involved here. They have one idea, however, as to what public convenience and

necessity means, in this particular type of case, and we have another; but the opinion that we have regarding convenience and necessity is based on the decisions of the Interstate Commerce Commission.

Mr. BARKELL. Well, now, we do not want to get into an argument along that line here, Mr. Yockey. We went all through

that once before at Indianapolis.

Mr. HARRY YOCKEY. All right. I want to report my other proposition, however, that we have not been afforded any opportunity to cross-examine anybody to whom this witness may have talked in connection with his survey, or in arriving at his findings. That is fundamental, I submit, in a matter of this sort. In other words, we have no opportunity to know.

Mr. Des Roches. This man is not coming in here and testifying as a shipper witness, your Honors. He is in a different category. He is coming in here and testifying as an expert; and if he has an opinion, he is certainly entitled to give it, based on the survey that

he himself personally has made.

Mr. HARRY YOCKEY. As far as expert testimony is concerned, there are certain well-defined rules under which, and only under which, expert testimony may be received. Now, if they have the direct evidence, let them put it into this record, and instead of asking for the conclusion of this witness, let the Commission draw its own conclusion. That is not any matter that calls for expert testimony. This man goes out into the field, and claims that he secured certain information on which, as I stated, we are afforded

no opportunity to cross-examine, and for that reason alone. if for no other reason, we contend that this sort of testimony

is highly out of place in this proceeding.

Mr. CLARDY. Your Honors, since I did not propound the question, perhaps-

Mr. BARKELL, Just a moment, please, Mr. Clardy. The objec-

tion is overruled, and the witness may answer the question.

Mr. Des Roches. Will you read the questio... please, Mr. Reporter.

(Question read.)

A. The survey in regard to transportation?

By Mr. DES ROCHES:

Q. Yes.

· A. My findings, based on the studies which I had made, were that the existing transportation facilities, common carrier, contract carrier, and others, were more than adequate to take care of the demands of the territory.

Q. Now, then, have you subsequently made another survey, an

industrial survey, in the same territory?

A. Yes; I have made both.

Mr. HARRY YOCKEY. Just a moment. We want to object to that also, if the Board please, for the same reasons as stated in the other objection.

Mr. BARKELL. Overruled.

By Mr. DES ROCHES:

Q. For whom was that survey made?

A. That survey was made partly for the chamber of commerce, and partly to complete my own files.

756 Q. The chamber of commerce of Traverse City?
A. Yes.

Q Will you please give the Joint Board and the Commission some information as to just what type of survey it was that you made, and what it covered?

A. Well, it had to do principally with economic factors, which

might influence the future economic progress of that area.

Q. All right. Now, what were some of the economic factors that you made an investigation into in connection with that survey?

A. Primarily population trends.

Q. What did you find, if anything, as to population trends?

A. I found that the population has markedly decreased since last year.

Q. Do you have any figures available, as to what that decrease has amounted to?

A. Yes.

Q. Will you state?

A. The figures taken from the United States Employment Service, and from the Michigan publication Labor and Industry, together with the results of my own investigation among employers and others, and also the fact of the induction of men into the armed services, indicate for the five-county area around Traverse City, recessenting approximately 55,000 of population, according to the 1940 survey, a drop of approximately 9,000 in population, out of a population, as I say, of 55,000.

Q. And that drop of 9,000 in population took place over a

period of what time!

A. In a period of a little over one year. Part of the drop was due to persons leaving the area for industry, employables between the ages of 26 and 35.

Q. Then, that drop has occurred since you made your survey into the transportation familities of the community, has it not?

A. Yes.

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Q. What did your survey disclose as to the number of industries located in the territory, particularly in the city of Traverse City itself?

A. The industries, excluding the canning plants—I will qualify it that way—are 12 in number, as I recall it at the moment.

Q. 12 industries?

A. Yes-excluding the canning plants.

Q. Is that in Traverse City?

A. Yes.

Q. Approximately how many men would you say are employed

in those 12 industries in Traverse City!

A. I am not able to give you an accurate answer to that question just at this time, because of the rather violent fluctuations that have occurred during the last six months.

Q. Do you know of any industry in Traverse City that employs

more than, say 250 men?

A. No, sir; I do not-excluding the canning plants.

758 Q. Excluding the canning plants.

A. Right.

Q. Has there been a decrease in industry in the city during the course of the past two years—Traverse City?

A. Yes.

Q. To what extent?

A. Probably 115 employees.

Q. A decrease of 115 employees?

A. Yes.

What is the nature of the industry in the city of Traverse City?

A. Mixed.

Q. Mixed?

A. Yes,

Q. Well, can you give the Joint Board and the Commission some idea as to the types of commodities that are manufactured there!

A. Why, yes, sir. There are trousers, automobile parts, caskets, hydrants, valves, cigar boxes, cold pressed plastics, lawnmowers, sprayers, and hand agricultural implements.

Q. Now, what effect, if any, has the war had on the industries

that are located in Traverse City?

A. It has had a bad effect.

Q. In what way?

A. To this extent, that many of them have, under the restrictions, been obliged to cease operation.

Q. Have any war plants or defense plants gone into the city to supplement the industry that was operating there prior to the war?

A. There are two new plants in potential; that is, that are not yet in operation. There is one existing plant, the True-Fit Trousers Company, which is running entirely on governmental

business. There is one plant that is manufacturing sprayers, and hand agricultural implements, which is running on a partial basis

on government business.

Q. Now, Mr. Buck, based upon the surveys which you have made covering both the transportation facilities, and the economic and industrial situation there in the city of Traverse City, Michigan, I will ask you if you have an opinion as to whether or not the transportation facilities into and out of the city of Traverse City at the present time, are adequate?

Mr. HARRY YOCKEY. Just a moment. If the Board please, may I renew the objection to this question that I made to the preceding questions, a moment ago, without burdening the record by repeat-

ing it specifically?

Mr. BARKELL, Yes.

Mr. HARRY YOCKEY. Just let the record show that that objection; and all of the grounds thereof, are renewed to this question.

Mr. Des Roches. Just answer this pending question yes or no, Mr. Buck. I am merely asking you whether or not you 760 have an opinion.

Mr. HARRY YOCKEY. Just a moment. Let us have a

ruling.

Mr. BARKELL. The record shows that you are renewing your

objection to this last question.

Mr. HARRY YOCKEY. Yes; I want the record to show the obection, without taking the time and burdening the record to repeat it. Just let the record show the same objection I made a moment ago.

Mr. BARKELL. The record will show your objection.

Mr. HARRY YOCKEY. And may we have a ruling?

Mr. BARKELL. Overruled.

By Mr. DES ROCHES:

Q. You may answer the question.

A. Yes.

Q. What is that opinion?

A. My opinion is-that the transportation facilities at the present time existing there are more than adequate to meet the demands of the territory that they serve.

Mr. DES ROCHES. That is all. Mr. Barkell. Cross-examine.

Mr. HARRY YOCKEY. If the Board please, I move that all of the testimony of the witness be stricken from the record, for the reasons heretofore given in my objection.

ME. BARKELL. Motion denied.

Mr. HARRY YOCKEY. No questions.

Mr. BARKELL. No questions?

Mr. HARRY YOCKEY. Nothing.

Mr. BARKELL. If there are no further questions, the witness is excused.

(Witness excused.)

Mr. BARKELL. Mr. King, do you have a witness whom you would like to present at this time?

Mr. Kind. Not just at this moment; no, your Honor.

Mr. BARKELL Let us get along, gentlemen. Is there another witness ready to go on?

Mr. CLARDY. I have a witness.

Mr. BARKELL. All right.

Mr. CLARDY. Mr. Garthe.

CHARLES E. GARTHE was sworn and testified as follows:

Direct examination by Mr. CLARDY:

Q. Your name, Witness.

A. Charles E. Garthe.

Q. Where do you live?

A. Traverse City.

A. Michigan?

A. Yes.

Q. You have been present during the hearing here today, and have heard the testimony of the other preceding witnesses, have you not?

A. Yes.

762 Q. What is the nature of your business or occupation?

A. I take care of the shipping for the Grand Traverse

Metal Casket Company.

Q. In other words, you are the gentleman who is employed by that company to handle and direct the shipping of that company; is that it?

A. Yes.

Q. Does your company manufacture, sell, and ship, as its name indicates, caskets!

A. Yes, sir; we make metal caskets and undertakers' supplies.

Q. Has the war had any effect upon the manufacture and production of those commodities?

A. Yes, sir; it has.

Q. In what way?

A. Well, at the present time it looks as though we will have to discontinue the manufacture of metal caskets within the next two or three weeks, say.

Q. Are you at the present time, then, substituting some other product for the manufacture of that commodity?

A. Yes, sir.

Q. What is that?

A. We are switching to wood, and we hope that we may get into something else also; but I am not just sure about that at the present time.

Q. Now, with regard to your out-bound movements first: does your company at the present time ship its manufac-

tured products in interstate commerce?

A. Yes, sir. Most of our products go to points outside of the state. A good proportion of them go into the east.

Q. When you refer to the east, what states in particular do you

have reference to?

- A. Oh, Rhode Island, New York—Brooklyn; New Jersey; and down into Pennsylvania. We do not ship west of the Mississippi River, I might say. It is mostly along the Atlantic coast, the Atlantic seaboard.
- Q. Does your company have any materials moving inbound, in interstate commerce?

A. Yes.

Q. Where do those materials come from?

A. From out of the state do you mean?

Q. Yes.

A. Yes, sir; most of them come from outside of the state, I would say. The silks come from New York; the lacquers come from different places. They come from North Chicago, Illinois; Indianapolis, Indiana; and different places, even as far as New Jersey. That is where the Egyptian Lacquer Company is located. The steels have all come from Pennsylvania in the past—the American Rolling Mills. That is, at one time we used copperbearing steel, which came from Vanderbilt, Pennsylvania; but

recently it has come from the American Rolling Mills at

764 Young town, Ohio.

Q. Now, as far as the in-bound movement of steel is concerned, I take it from your testimony that that will shortly cease; is that correct?

A. It has ceased.

Q. It has already ceased?

A. Yes.

Q. And you are at the present time, then, merely existing—or getting along with what you have on hand?

A. Yes.

Q. I see. As to the other commodities, however, will they still continue to move in-bound?

A. Well, as far as the wood is concerned, at the present time we are not allowed to use—that is, we cannot get wood for our boxes, so we will have to substitute veneer for our shipping cases. That is, there are certain woods that are allowed, but only certain

woods, and we have a stock on hand; but we don't know far enough ahead just what is going to happen, because things are

changing so rapidly, right along.

Q. All right. Now, with respect to the shipping requirements of your company: up to the present time have you used both rail and truck service in your in-bound as well as your out-bound movements; and if so, will you describe how?

A. We use the rail service to a considerable extent. Most of our stuff moves by rail, both in-bound and out-bound. But

765 we have used all available facilities.

Q. In connection with your in-bound movement, does that

come in principally in carload quantities?

A. Why, the steel has been in carload quantities almost entirely. Once in a while we get a small lot from Chicago, or from Detroit, that is less than a carload; but normally, however, it has been in carload quantities. As a matter of fact, those items are ordered quite a long way in advance, because they have to be rolled specially in the mills.

Q. Now, you say the movement of steel has ceased.

A. Yes.

Q. But how about the other commodities? So far as the future is concerned, will you be getting them in-bound in carload quan-

tities, or less-than-carload quantities!

A. Why, we don't know exactly; we are not sure right at the present time, but we hope to be able to get them in in carload quantities. At the present time we are getting them less-than-carload, however. We are feeling out, so to speak, different sources of supply.

Q. Have you used the services of Parker Motor Freight?

A. Yes.

Q. In what sort of operations have you used the Parker Motor.

Freight service?

A. Well, they get almost everything in the way of the different products that come in, such as lacquers, and some silks, and even the veneer cases coming from northern Michigan.

They get almost everything.

Q. Has that line handled any products for you from points such

as you mentioned, like Chicago and Indianapolis?

A. Yes, sir. The lacquers that we get in from the Advance Paint Company come in mostly by Parker Motor Freight.

Q. Has the service that Parker has rendered you been satisfactory to your company?

A. Yes.

Q. Now, Witness, I take it you are familiar with the general nature of the service which is proposed in the application under consideration here, are you not?

A. I think so; yes.

Q. At the present time would you tell us, if you can, something about the over-all time that is consumed, or involved in the rail movements, in the case, for example, of the shipments that come into you in-bound some from of the eastern points that you have named?

A. Well, most of our stuff is healed by rail, because it is long-haul. However, in the state, as far as shipments in the state are concerned, we ship a lot by truck; mostly by truck, I would say.

Mr. BARKELL. Never mind any intrastate operations, Mr. Witness. Let us confine ourselves here to interstate shipments.

By Mr. CLARDY:

your plant at Traverse City!

Q. I had in mind, Witness, an in-bound shipment coming, say, from some point in the east. My question is, do you definitely have in mind the amount of time that the rails consume in handling such a shipment, say from Brooklyn, New York, or some place else in New York, or New Jersey, to

A. Why, I remember one particular case where my brother ordered some silk, I believe it was, from Chicago—or at least he ordered something from Chicago; I don't remember now just exactly what it was, but he ordered it, and there were two orders, and one was handled by express, and the other was handled by truck. We wanted the stuff just as quickly as we could get it; so we figured that we would send part of it one way and part of it the other, so as to be sure to get at least a part of it as soon as possible; and I remember that the truck got in just a little ahead of the express. That was from Chicago.

Q. Do you have in mind as to whether or not at the present time you are receiving an over-night truck service from Chicago?

A. As far as I know, we do; yes.

Q. But you do not have in mind, do you-or do you—the precise amount of time that would be involved in moving a shipment, say, from New York by rail to your plant?

A. Why, I should say, just offhand, four or five days, but I wouldn't be able to tell you definitely about that. Some of the silk

comes by express.

Q. You say that some of your shipments come in by express?

768 A. Yes.

Q. Of silk?

A. Yes, sir; some of it, and then some of it also comes in by freight, where there are larger lots, you understand.

Q. Now, the proposal that is here before us, as far as the rail side of the case is concerned, has to do with a claim that if this

application is granted, it will mean that the Pennsylvania Railroad will be able to speed up its in-bound or its out-bound service, or both, somewhere from zero up to 24 or 48 hours. Now, at the present time, is the service which you are receiving sufficiently fast and satisfactory to meet all of the needs of your company?

A. Yes; I think it is.

Mr. CLARDY. That is all.

Mr. BARKELL. Cross-examine.

Cross-examination by Mr. HARRY YOCKEY:

Q. Mr. Witness, in the case of any less-than-carload shipments, that you receive by rail, over the Pennsylvania Railroad, where do they come from?

A. Most of our stuff is by the Pere Marquette.

Q. I am talking about any less-than-carload shipments that you do receive over the Pennsylvania Railroad.

Mr. CLARDY. If there are any that you know about, Witness. Mr. HARRY YOCKEY. He has already testified that there are.

A. From Kendallville, Indiana.

By Mr. HARRY YOCKEY:

Q. You do get some shipments from there?

A. Yes.

Q. Less-than-carload shipments by the Pennsylvania Railroad?

A. Yes.

Q. All right. Now, how long does it take, if you know, for those shipments to reach you by the Pennsylvania Railroad?

A. I wouldn't be able to say just definitely, but—you are talking about Kendallville, now, are you?

Q. Yes.

A. A number of days; the shipments that we get in from Kendallville take a number of days.

Q. A number of days?

A. Yes.

Q. Well, now, then, do you use truck service from Fort Wayne, in the case of any shipments that come to you from Fort Wayne?

A. We have one customer located near Fort Wayne, that is, at Ossian, Indiana, and he has requested a certain truck line.

Q. Well, now, do you get your shipments quicker by truck from that point, than you do from Kendallville, Indiana, by rail that is, your less-than-carload shipments?

A. Well, maybe I didn't make myself clear, or perhaps I didn't correctly understand you. It is shipped that way, to that particular point. In other words, we do not get anything in from there. That is out-bound.

Q. Well, then, let me put it this way, Mr. Witness: referring to the shipments which you receive at the presenttime by rail, that is, less-than-carload shipments interstate, does it take longer for those rail shipments to reach you than it would take by truck to get them from the same point?

A. I would say that it does; yes.

Q. It takes longer by rail—

A. Yes.

Q. Than by trucke

A: Yes.

Q. Well, then, would you not rather have a comparable service by rail, with the service which you receive by truck!

A. (No answer.)

Q. Would you not rather have a shorter time by rail, as compared with the ordinary truck service?

A. Well, we don't.

. Q. My question is: would you or would you not?

A. (No answer.)

Q. I am just asking you to answer that question:

Mr. BARKELL. You can answer that question yes or no, Mr. Witness.

A. How is that again?

Mr. HARRY YOCKEY. Read the question, please.

(Question read.)

A. Why, I don't know as I would rather ship by rail than by truck; no, sir. As far as the service is concerned-

Mr. BARKELL. That was not the question.

Mr. HARRY YOCKEY. No.

The WITNESS. What was the question?

Mr. BARKELL. Read it again.

By Mr. HARRY YOCKEY:

Q. The question is: would you not like to have the amount of time consumed in a shipment reaching you by rail, the same as the time-involved in such a shipment reaching you by truck?

A. Oh. yes; sure.

Q. Now, you say that it takes longer for a shipment to reach you by rail than it does by truck.

A. Yes.

Q. If the railroad can speed its service up, we will say, by from. 24 to 48 hours, that would be of value and benefit to you in your business, would it not?

A. Sure.

Q. And I take it, then, you would like to have that type of service-

A. Oh, yes.

Q. If it could be instituted, would you not?

A. That would be all right; yes, sir.

Mr. HARRY YOCKEY. That is all.

Redirect examination by Mr. CLARDY:

Q. But if that could be accomplished, Witness, by using the present motor carrier service that you are using at the present time, would that also not be of some benefit to you!

A. That would be all the same to us.

Q. All the same to you.

A. That would be perfectly ail right with us; yes, sir.

Mr. CLARDY. Thank you.

Mr. BARKELL. Are there any further questions of this witness?

Mr. HARRY YOCKEY. That is all.

Mr. BARKELL. If there are no further questions, the witness is excused.

(Witness excused.)

Mr. BARKELL. Are you ready to put your witness on now, Mr. King?

Mr. King. Yes; your Honor.

Mr. BARKELL. You may call him.

Mr. King. Mr. Harmon.

Mr. BARKELL, I might say, gentlemen, we are going to let Mr King put a witness on at this time, who is anxious to get away.

Mr. Clardy. That is quite all right.

GERALD E. HARMON was sworn and testified as follows:

Direct examination by Mr. KING:

773 Q. Mr. Harmon, will you give your full name to the Reporter, please?

A. Gerald E. Harmon.

Q. Where do you live?

A. Grand Rapids, Michigan.

Q. With what company are you connected?

A. Norwalk Truck Line Company.

Q. In what capacity?

A. District manager, western Michigan.

Q. How long have you been connected with the Norwalk Truck Line Company, Mr. Harmon?

A. Three years.

Q. How long have you been district manager?

A. For the past year and a half.

Q. What territory is under your jurisdiction?

A. Lansing, Grand Rapids, Battle Creek, and Kalamazoo.

Q. As district manager of your company for that district, have you had occasion to, and have you, familiarized yourself with the general operations of your company?

A. Yes.

Q. Generally speaking, what territory does the Norwalk Truck Line Company serve in interstate commerce?

A. Why, generally speaking, it serves the states of Indiana,

Ohio, and Michigan, and Chicago, Illinois, and suburbs.

Mr. King. Mr. Reporter, protestant's exhibit No. 18 for identification, please.

(Protestants' exhibit No. 18, Witness Harmon, marked for identification.)

By Mr. KING:

Q. Now, Mr. Harmon, does the Norwalk Truck Line Company operate under authority issued by the Interstate Commerce Commission?

A. Yes.

Q. I show you what has been marked by the Reporter here for purposes of identification as protestant's exhibit No. 18, and I will ask you to state briefly for the record what that is, please. I am referring now to the-

A. Map?

Q. —map portion of the exhibit.

A. Why, this exhibit No. 18 for identification shows our permitted routes by the Michigan Public Service Commission and the Interstate Commerce Commission, that we operate over daily, both in Michigan and outside.

Q. In other words that shows not only your routes in the state, of Michigan, but also your routes in the states of Indiana and

Ohio?

A. Yes.

Q. Is it a complete map?

A. Yes, sir.

Q. Now, does your company operate between Fort Wayne, Indiana, and Michigan points?

· A. Yes.

Q. And does this exhibit, including the list of points served, indicate what points are served between Fort Wayne, Indiana, and Michigan points?

· Q. How far north does your company operate?

A. Into Michigan?

Q. Yes.

A. Well, we operate north in Michigan as far as-well, perhaps, Midland, Michigan, would be the furthest point on the east.

Q. And to Grand Rapids on the west? A. Yes.

Q. Are you familiar with the route which is here proposed by the applicant between Fort Wayne, Indiana, and Mackinaw City, Michigan?

A. Yes.

Q. Does that route parallel a certain portion of the routes operated over by Norwalk Truck Line Company, between Fort Wayne, Indiana, and Grand Rapids, Michigan.

A. Yes.

Q. To what extent?

A. It parallels approximately, I would say—or at least threequarters of our route between Fort Wayne and Grand Rapids.

Mr. King. At this time, if the Joint Board please, I offer protestants' exhibit No. 18 in evidence.

Mr. BARKELL. Is there any objection?

776 Mr. HARRY YOCKEY. No objection.

Mr. BARKELL. There being no objection, protestants' exhibit No. 18 is received in evidence and made a part of this record.

(Protestants' exhibit No. 18, Witness Harmon, received in evidence.)

By Mr. King:

Q. Now, Mr. Harmon, what service does Norwalk Truck Line Company render in interstate commerce between Fort Wayne, Indiana, and points along its route between Fort Wayne and Grand Rapids, Michigan?

A. Over-night.

Q. Approximately how many units of equipment does Norwalk Truck Line Company operate over all of its routes?

A. Approximately 600.

Q. And would that consist approximately of one-half tractors and one-half trailers?

A. Yes.

Q. In addition to that equipment, your company does operate a few trucks, ordinary trucks, does it not?

A. Yes.

Q. On its peddle runs?

A. On short, peddle runs; yes, sir,

Q. Does your company maintain terminals at points in Michigan along the proposed route.

A. Yes.

Q. At what points?

777 A. Kalamazoo and Grand Rapids.

Q. Now, I note by protestants' exhibit No. 18, Mr. Harmon, that you do not operate over the highway direct between Sturgis and Kalamazoo, Michigan.

A. No.

Q. However, do you serve Kalamazoo and Grand Rapids direct from Fort Wayne, Indiana?

A. Yes.

Q. I believe you stated that is daily service.

A. Yes.

Q. Over-night.

A. Yes.

Q. Now, with respect to your return service; that is, service in the return direction: what service do you render between Grand Rapids and Fort Wayne, Indiana?

A. The same.

Q. The same?

A. Yes, sir. Every point on the routes of the Norwalk Truck

Line Company has direct over-night service.

Q. Does this map indicate all of the points between Fort Wayne, Indiana, and Grand Rapids, Michigan, that your company serves?

A. Yes.

Q. You are familiar with the fact, are you not, Mr. Harmon, that The Pennsylvania Railroad operates a line of railroad between Fort Wayne, Indiana, and Mackinaw City, Michi778 /gan, through Kalamazoo and Grand Rapids?

A. Yes.

Q. In the event that shipments were tendered to your company at Fort Wayne by The Pennsylvania Railroad for transshipment by truck to any point on this proposed line, or any point—any other point in the state of Michigan, that is served by the Norwalk Truck Line Company, would your company be in a position to, and would it accept such shipments?

A. Yes.

A. Now, are the trucks of your company at the present time being operated to the limit of their capacity at all times?

A. The majority of the time, I would say:

Q. Is your company in a position to secure additional equip-

ment, if the demands of the traffic should require it?

A. Yes, sir; we are. We have some equipment in our yard at the present time that is being licensed, and we have four more pieces on order.

Q. Does your company have interchange arrangements with other carriers that operate beyond its line?

A. Yes.

Q. That is true at the city of Grand Rapids, is it not?

A. Yes, sir; it is; and also every point that we operate to in Michigan of any size.

Q. In the case of shipments received by you that are destined to points north of Grand Rapids, say, between Grand Rapids

779 and Mackinaw City, Michigan, do you have trucking companies there with which you transfer and interchange freight?

A. Yes, sir.

Q. Do you do that every day?

A. Yes.

Q. You accept and transport both truckload shipments and less than truckload shipments, do you not?

A. Yes.

Q. Do you exchange trailers, loaded trailers, with other motor carriers?

A. Under the new order of April 7th, of the Michigan Public Service Commission, we are allowed to operate our trailers on a trip-lease basis, which permits us to go straight through to any point in the state of Michigan.

Q. So that if a truckload shipment is interchanged, you can

interchange the trailer; is that correct?

A. We may either interchange the trailer, or we may go straight through, as I say, on a trip-lease basis.

Mr. King. That is all.

Mr. BARKELL Cross examine.

Cross-examination by Mr. HARRY YOCKEY:

Q. Mr. Harmon, referring again to protestants' exhibit No. 18, which you have introduced here: is that a fair map of all of your operations?

A. Yes.

780 Q. It is a complete map, is it?

A. It is supposed to be.

Q. And it shows all of the cities and towns that you serve? A. Yes.

Mr. HARRY YOCKEY. I think that is all.

Mr. BARKELL. Are there any further questions of the witness? Mr. Drs Roches. Just one question.

By Mr. DES ROCHES:

Q. Mr. Witness, are you familiar with the fact that the Pere Marquette Railroad Company has entered into agreements with carriers here in the state of Michigan to handle freight for it?

Mr. LINDSTRAND. Just a moment. I object to that question,

if the Joint Board please.

Mr. Des Roches. I submit, if your Honors please, that that is a very material question.

Mr. BARKELL. What is the objection?

Mr. Lindstrand. The objection is that that is not involved here in any way whatsoever. We are only trying one issue here.

Mr. Des Rocries. We are confronted with an order of the ODT, with which we are all familiar; and if another railroad can arrange for that type of service, there is no reason in the world why this particular railroad cannot.

Mr. HARRY YOCKEY. We do not consider, if the Board please, that any ODT order has anything to do with this particular

case.

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Mr. BARKELL, I agree with you there.

Mr. CLARDY. Well, your Honor, may I be heard on that? I believe that has a very important bearing in this case.

Mr. BARKELL, Yes.

Mr. Clarry. We want to show by this line of questioning that, contrary to the claim of The Pennsylvania Railroad, and The Willett Company, this very kind of service can be, and as a matter of fact is being, rendered to railroads operating in the state of Michigan, involving some of the very same points that are involved in this application; and we want to develop that to show, contrary to what they are claiming, that as a matter of fact, there is nothing difficult, or impossible, or special about it; so that it cannot be handled by regular compact carriers that are already in the field. Now, the basis of their entire case is this: it is bottomed almost entirely, as I understand it, on the proposition that this has to be done only by their own hired men; that it cannot be done satisfactorily otherwise. This evidence is introduced to show that that is not so, and that it can be done otherwise; because it is being done.

Mr. HARRY YOCKEY. May I say just a word further, if your

Honors please.

Mr. BARKELL. Go ahead.

Mr. HARRY YOCKEY. You will recall that earlier in the case, when Mr. Christie was on the witness stand, we asked him what the reasons were why we wanted The Willett Company

to render this service for us, and indicated that there were 18 of them, as to why we wanted a subsidiary to perform this particular type of service; and Mr. Clardy objected to that, and you sustained the objection.

Mr. CLARDY. And you got all of them in, anyway.

Mr. Harry Yockey. I got them in only by way of an offer of proof, which is for the Commission to decide ultimately. I thought you were wrong at that time, and I believe that the Commission will so decide. However, as far as any ODT order is concerned, that has nothing to do with this case. We have a particular type of service involved here, and this man has said that his company is willing to perform it. That is what he has already

said, and that is all that his testimony amounts to. This is just getting very far afield here. I believe that this is clear off of any issue here.

Mr. CLARDY. May I add-

Mr. BARKELL. Just a moment, please, Mr. Clardy. Counsel, is this question based on, or does it involve, an order or orders of the ODT?

Mr. DES ROCHES. No.

Mr. BARKELL. It does not?

Mr. Des Roches. No, your Honor. It is based upon an actual fact, that is already in existence, namely, that the Pere Marquette

Railroad Company has entered into such contracts or agreements here in the state of Michigan, to take over and render this exact type of service. I do not know what the answer of the witness is going to be

answer of the witness is going to be.

Mr. BARKELL. The objection is overruled. The witness may answer the question.

The WITNESS. State it again.

Mr. Des Roches. Will you read it, please.

(Question read.)

A. Yes.

Mr. DES ROCHES. That is all.

Mr. CLARDY. Your Honor, I had intended to ask a question or two before the direct was concluded. May I ask them now?

Mr. BARKELL. Yes.

By Mr. CLARDY:

Q. Witness, I am not exactly sure, but I do not believe this particular question has been asked of you directly. If it has been, will you please indicate. The schedule proposed by the applicant here, as set forth on applicant's exhibit No. 4, and as subsequently modified by the direct testimony of one of the witnesses, or, I believe, of two of the witnesses for the applicant, sets up certain times of arrival and departure. Is your company in a position to, and would it, furnish service at the scheduled times proposed by the railroad company here, if the railroad company would show a willingness to enter into an arrangement with you to handle that business?

A. Yes.

Q. Is there anything about the operations of your company that would in any way preclude you from furnishing a regular, scheduled service for either The Pennsylvania Railroad Company, or any other railroad, over this route, or between the points which you serve, if they were to ask you to render such service?

A. No.

Q. Now, I believe you testified that you are already rendering a daily service over these routes; is that correct?

A. Yes.

Q. Well, in that connection, have you at any time ever handled any freight that was tendered to you for ultimate handling by a railroad on to destination?

A. No.

Q. You have not had any of that in the past ?.

Q. Has the railroad company ever offered you anything that it. has transported part way, and then wanted you to carry on to destination?

A. No.

Q. Has there ever been any effort on the part of this particular railroad to obtain any of your service over any of these routes to any of these points?

A. Not to my knowledge.

Q. Your company is not the only carrier operating between the points that you serve, is it?

785

A. No. Q. You have some knowledge of the existence of competition in the field at the present time, have you?

A. Oh, yes.

Q. Do you presently recall the names of some of the carriers that are in competition with you, between the points which you serve, that are involved in this application?

A. Yes, sir.

Q. Will you name them.

A. O. I. M. Transit Corporation, Interstate Motor Freight System, Cloverleaf, Holland Motor Express-let me see

Q. Did you ever hear of Associated?

A. Associated Truck Lines?

Q. Yes.

A. Oh, yes.

Q. Day's Transfer?

A. Yes, sir. I guess they operate from Sturgis-well, scratch that out. I know of them.

Q. You have heard of Keeshin also, have you not? A. Yes.

Mr. BARKELL. What is this; an advertising campaign?

Mr. CLARDY, No.

Mr. BARKELL. Are there any further questions of the witness?

Mr. HARRY YOCKEY. I take it, Mr. Clardy, that these other truck lines, whose names have just been mentioned, will have 786 representatives here to testify; is that correct?

Mr. CLAMPY. That is my understanding, yes.

Mr. HARRY YOCKEY. All right. With that understanding, then, if the Board please, I see no reason for cross examining this witness regarding his ideas of the service rendered by these other companies. I say that merely in the interests of time.

Mr. Des Roches. Well, now, just a moment. This man is not attempting to testify with respect to the service offered by these other companies. He was simply asked to name the competing truck lines that he encounters in serving his points, and that is all he has done.

Mr. HARRY YOCKEY. I still stand by what I said.

Mr. CLARDY. You do not retract anything.

Mr. HARRY YOCKEY. Not a bit.

Mr. BARKELL. Let us not consume any time unnecessarily here, gentlemen. Is that all with the witness?

Mr. HARRY YOCKEY. Just a moment, if your Honor please. May we confer here for just a moment. Counsel may have a question. No, that will be all

Mr. BARKELL 1s that all, Mr. Des Roches?

Mr. DES ROCHES. Nothing-further.

Mr. BARKELL. If there are no-further questions, the witness is excused.

(Witness excused.)

787 Mr. BARKELL. Call your next.
Mr. DES ROCHES. Mr. Smiley.

E. W. SMILEY, Jr., was sworn and testified as follows:

Direct examination by Mr. Des Roches:

Q. Mr. Smiley, will you give your full name to the Reporter, please?

A. E. W. Smiley, Jr.

Q. Where do you live?

A. Sturgis, Michigan.

Q. Are you connected with some industrial company there at Sturgis?

A. Yes.

Q. What company?

A. Berridge Shear Company.

Q. In what capacity?

A. Traffic manager and purchasing agent.

Q. In what business is your company engaged?

A. We make hand shears, tinners' snips, and so forth.

Q. Is your company engaged in defense work?

A. Some:

Q. Your company, I take it, has both incoming and outgoing freight; is that correct?

A. Yes.

Q. How is your incoming freight at the present time.

A. Truck and rail.

Q. And how is the outgoing freight being handled?

A. The same.

Q. To what points does your company make shipments outside of the state of Michigan?

A. We ship all over the United States.

Q. Can you give the Joint Board and the Commission some idea as to the volume of your shipments?

A. This is outbound you are talking about?

Q. Yes.

A. Oh-

Q. A truckload per day, or so many per week, or month.

A. Just speaking roughly offhand, I would say approximately one ton per day.

Q. One ton per day!

A. Yes.

Q. Now, what percentage of that moves by common motor carrier, and what percentage of it moves by rail?

A. Oh, I would say approximately 25 per cent, probably, goes

by rail, and about 75 per cent moveds by truck.

Q. What has your experience been up to the present time with the service that is rendered you by the common motor carriers in the movement of your outgoing freight?

A. It has been very good.

789 Q. And what has your experience been in connection with the handling of your incoming freight from the standpoint of the common motor carriers?

A. All right; fine.

Q. Do you have any complaint, in other words, to register in connection with the existing service?

A. None.

Q. Insofar as your own company is concerned, would you say that there is any need for any additional transportation service at Sturgis?

A. No.

Mr. DES ROCHES. That is all.

Mr. BARKELL, Cross-examine.

Cross-examination by Mr. HARRY YOCKEY:

Q. Do you use The Pennsylvania Railroad?

A. Yes.

Q. On your outbound shipments?

A. Yes.

Q. In less than carload quantities?

A. Yes.

· Q. And do you use The Pennsylvania Railroad also in the movement of your inbound shipments in less than carload quantities)

A. Yes-and some carload.

Q. Some carload?

A. Yes.

790 Q. I am going to confine my questions to you, Mr. Smiley, to less-than-carload shipments.

A. All right.

Q. Just so that you will understand what I am getting at.

A. Yes. All right.

Q. Now, for instance, do you make any shipments via The Pennsylvania Railroad from your plant at Sturgis to New York?

A. New York?

Q. Yes; that is, to points in New York.

A. Not that I can think of.

Q. Well, let us take Indiana, then. Do you make any less thancarload shipments by The Pennsylvania Railroad to points in Indiana?

A. No.

Q. All right. Well, then, to save time, will you name me some of the points where you do ship by rail?

A. Los Angeles.

Q. All right. Let us take Los Angeles, California, then. How long does it take you to make those shipments from Sturgis, Michigan, to Los Angeles, California?

A./It varies.

Q. Generally.

A. Approximately 10 days.

Q. Approximately 10 days?

A. Yes, sir.

791 Mr. Des Roches, By what method?

Mr. HARRY YOCKEY. Rail; I am talking about shipments that go out over The Pennsylvania Railroad.

The WITNESS. Well, of course, you understand there is a transfer.

Mr. HARRY YOCKEY. I am talking about the way the shipments move when they go out from your place at Sturgis.

The WITNESS. All right.

By ME HARRY YOCKEY:

Q. You ship them out by The Pennsylvania Railroad.

A. Yes.

Q. And that railroad in turn transfers them to some other railroad.

A. Yes.

Q. Is that it?

A. Yes.

Q. And that, you say, takes about 10 days?

A. Yes.

Q. Well, now, let us take a shipment coming inbound from some interstate point, some point from which you ship, a less-than-car-load shipment, by way of The Pennsylvania Railroad in Michigan.

A. Coal moves that way.

Q. From where?

A. Somewhere in Kentucky, or West Virginia.

792 Q. In less-than-carload shipments!

A. Oh, pardon me. No.

Q. I am still talking, Mr. Witness, as I explained to you a moment ago, about less-than-carload shipments.

A. I can't think of any.

. Q. Do you have any less-than-carload shipments coming in to you from Chicago by rail?

A. No.

Q. Or from Indianapolis?

A. No.

Q. Well, then, can you name me any point at all from which you do receive less-than-carload shipments coming in by rail!

A. Not right offhand.

Q. Well, now, why are you using truck line service at the present time in preference to the railroad, The Pennsylvania Railroad, to a given point?

A. Because the service is better.

Q. Because you are able to get from the truck lines a quicker service!

A. Yes.

Q. You would use the rail service—or rather, let me put it this way: would the rail service appeal to you if it were quicker than it is at the present time?

A. If it was quicker !

Q. Yes.

A. Why, yes.

Q. That would be a factor, would it not?

A. Yes.

793

Q. In other words, in the case of the shipments that you have described, as requiring 10 days to go from Sturgis, Michigan, to Los Angeles, California—that was your testimony, was it not?

A. Yes.

Q.—instead of requiring 10 days, if the railroad was able to cut off one day, or two days, from the time required for that movement, that would be a benefit to you in your business, would it not?

A. Probably.

Q. And that would be desirable to you, would it not?

A. Oh, probably it would, yes, sir; more so on the incoming,

perhaps, than on the outgoing, however.

Q. But in any event, Mr. Witness, whether it be inbound or outbound, any speeding up of the service, whether by rail or by truck, is beneficial to your business, is it not?

A. Always.

Q. So if that kind of service were to be rendered to you, or offered to you by the railroad, you would not have any objection to it, would you?

A. No.

Q. That is, The Pennsylvania Railroad.

A. No.

794 Mr. HARRY YOCKEY. That is all.

Mr. BARKELL. Is that all?

Mr. DES ROCHES. Just one question.

Redirect examination by Mr. DES ROCHES:

Q. Mr. Smiley, how much quicker would the rail service have to be in order to give you the same type of service, say, between Chicago and Sturgis, Michigan, that you are getting at the present time from the truck companies?

A. From Chicago

Q. Yes.

A: --- to Sturgis?

Q. Yes. You are at the present time getting an overnight service by truck between those two points, are you not?

A. Yes.

Q. Well, then, my question is, how much quicker, how much faster would the railroad service have to be in order to give you the same kind of service between those two points, Chicago and Sturgis, for example, that you are receiving at the present time by truck?

A. I suppose it would have to be, on an average, at least three days.

Q. Three days.

A. Yes.

Mr. DES ROCHES. That is all.

Mr. BARKELL Is that all?

795 Mr. HARRY YOCKEY. Nothing further.

Mr. BARKELL. If there are no further questions, the witness is excused.

(Witness excused.)

Mr. BARKELL. Call your next.

Mr. DES ROCHES. Mr. Moore.

E. M. Moore was sworn and testified as follows:

Direct examination by Mr. DES ROCHES:

Q. Mr. Moore, will you give the Reporter your full name, please.

A. E. M. Moore.

Q. Where do you reside?

A. Sturgis, Michigan.

Q. Are you connected with some manufacturing company in that city?

A. Yes, sir. O

Q. What company?

A. Langhlin Tool & Engineering Company.

Q. What is their business?

A. We manufacture tools, dies, jigs, and so forth.

Q. Is your company engaged in defense work?

A. Yes.

Q. Practically exclusively, would you say?

A. Exclusively.

796 Q. Exclusively—— A. Yes.

A. 108.

Q. 100 per cent?

A. Yes, sir.
Q. What is your capacity with the company?

A. Secretary-treasurer.

Q. In that capacity I take it you are familiar with the traffic problems of your company.

A. Yes.

Q. I take it that your company has both incoming and outgoing freight; is that correct?

A. Yes.

Q. Do you ship—and when I say "you," I am referring to your company, your understand.

A. Yes.

Q. To points outside the state of Michigan?

A. Yes, sir.

Q. To what principal points?

A. Oh, we ship to a great many points, where there are shell loading plants and ordnance plants.

Q. Specifically, where?

A. Well, there is Springfield, Massachusetts; Watervliet, New York; points in Louisiana, Texas, Indiana, Michigan, Iowa, and Illinois; St. Louis territory; Detroit territory; Flint, Battle Creek—

797 Mr. BARKELL. Restrict your testimony to interstate movements, Mr. Witness, to or from points outside of the state of Michigan, please. The WITNESS. Oh.

By Mr. DES ROCHES:

Q. To practically every point-

A. That was not the question that was asked, if I understood it correctly. Maybe you had better give it to me again.

Q. To practically every principal point in the United States,

would you say, outside of the state of Michigan?

A. Well, no, sir; that is not quite true, either, because we do not ship into the west coast territory at all.

Q. Exclusive of the west coast territory?

A. And no Rocky Mountain territory either.

Q. I see.

A. Our shipments are quite largely, I should say, in the middle west, although of late we have been shipping to arsenals and shell loading plants in the far south, and in New England also.

Q. Now, your company also has incoming freight, I believe you

testified.

A. Yes.

Q. Can you tell us from what principal points, outside of the state of Michigan, your incoming freight moves?

A. Cleveland and Chicago; Pennsylvania.

Q. How is your incoming freight being handled at the present time?

798 A. Quite largely by truck.

Q. What can you say as to the service which you are getting from the common motor carriers in the transportation of your incoming freight at this time?

A. Well, about all I can say is, that I am unusually well pleased

with it-if that will answer your question.

Q. Yes, sir. Are you also using the service of common motor carriers in the movement of your outgoing freight?

A. Yes.

Q. What can you say as to the type of service that the common motor carriers are rendering you in that connection?

A. It is remarkably good.

Q. Now, Mr. Moore, insofar as your company is concerned, would you say that you have any need for any additional transportation service at the present time?

A. None whatever.

Q. You have used, I take it, to some extent at least, rail service in the movement of your shipments, have you not?

A On occasion.

Q. Have you had any experience—or rather, what has your experience been in connection with the use of rail service?

A. I am not well satisfied with it.

Q. You say, you are not well satisfied with it?

A. No.

Q. Is that by reason of any particular thing, or any particular fact, that has arisen in connection with your use of that service?

A. Well, that is just from my own general experience-or from

our general experience with it.

Q. Well, to be a little more specific, have you experienced any delay, for example, in connection with rail shipments recently?

A. Yes, sir; we have. We had a rather unusual case just lately. We had an incoming shipment of steel that came from Cleveland territory in a gondola car—

By Mr. HARRY YOCKEY:

Q. Just a moment, please. I would like to ask the witness right there: was that a carload shipment or a less-than-carload shipment?

A. Less-than-carload.

Q. All right.

A. Or rather—no. Pardon me. I believe I am wrong about that. It came in a carload, I believe.

Q. That was a carload shipment?

A. Yes. I know it was.

Mr. HARRY YOCKEY. Objection.

. By Mr. DES ROCHES:

Q. Well, now, which was it, Mr. Moore, as you recall it now; a carload shipment or a less-than-carload shipment?

A. Well, I can tell you this, that it was a 27,000 pound shipment, but it consumed the entire car, or used the entire car;

800 that is, we didn't ship anything else with it, as far as that goes.

Mr. HARRY YOCKEY. I object.

By Mr. DES ROCHES:

Q. Did you say, 2,700 pounds, or 27,000 pounds?

Mr. LINDSTRAND. He said 27,000 pounds.

A. 27,000 pounds.

Mr. Des Roches. All right. I will concede that that is not involved, if that was a carload.

By Mr. DES ROCHES:

Q. Have you had any experience-

A. Well, now, just a moment. I wouldn't call 27,000 pounds of steel a carload, either.

Q. Well, then-

Mr. Lindstrand. Well, now, he has given it both ways. Which was it?

Mr. Eggers. Let him proceed.

By Mr. DES ROCHES:

Q. Was that a carload?

A. No.

Q. All right. Then, will you just go ahead and tell the Joint Board and the Commission your experience in connection with that particular shipment.

A. Well, as I started out to say, they shipped it in a gondola car, and it cost me \$25, and involved a delay of one day, getting

it unloaded.

Q. How long did it take from the time the car left the son point of origin, antil it reached your place of business?

A. I don't know.

Q. How?

A. I don't know.

Q. All right. Have you had any experience in connection with any other shipments—that is, any other rail shipments?

A. Yes.

Q. What ?

A. Well, I shipped a couple of packages on the 16th day of this month by the New York Central Railroad to the Watervliet Arsenal at Watervliet, New York, and I received a telephone call from the arsenal at Watervliet, New York, last Friday, asking me when we expected to forward the shipment. We told him that it had been gone then pretty close to two weeks, and that we would send a wire tracer after it.

Q. Has the carrier since traced the shipment?

A. Yes.

Q. Has the shipment reached its point of destination as yet?

A. That I don't know. You see, we got the message only Friday, and immediately notified the railroad company, and the railroad said they would put a tracer on it, and that was all I knew about it up to the time I left the office this morning.

By Mr. EGGERS:

Q. Mr. Witness, did I correctly understand you to say that that was the New York Central Railroad?

A, Yes.

802 By Mr. Des Roches:

Q. Was that shipment picked up by the New York Central?

A. No; we delivered the shipment ourselves to the New York Central depot there in Sturgis, and then they shipped it on to Watervliet, New York—or at least they were supposed to ship it there.

Q. What common motor carrier service are you using at the present time in connection with your incoming and outgoing shipments?

A. Well, our incoming stuff comes O. I. M. Transit Corporation; Day's Transfer; Conklin; Associated Truck Lines; Norwalk Truck Line Company; and Interstate Motor Freight System.

Q. What about the outgoing?

A. Why, as far as the outgoing shipments are concerned, I would say that they are handled by the same companies, quite largely.

Mr. DES ROCHES. That is all.

Mr. BARKELL. Cross-examine.

Cross-examination by Mr. HARRY YOCKEY:

Q. Mr. Moore, your company does receive in-bound shipments in less than carload lots by way of The Pennsylvania Railroad in interstate commerce, does it not?

A. Yes, sir-that is, we have. That has been very rarely, I

would say, however.

Q. But you do on occasion-

A. Yes.

Q. - receive such shipments?

803 A. On occasion; yes.

Q. And do you make any shipments out of the state of Michigan by way of The Pennsylvania Railroad into other states in less than carload quantities?

A. Why, that is not very often there, either. That is also a

very rare occurrence, I would say,

Q. Why do you not send your business by The Pennsylvania Railroad?

A. (No answer.)

Q. Does the time element, the amount of time required to transport the shipments, have anything to do with it?

A. Why, yes, sir; to be frank about it, it does have a lot to do

with it. It is an important factor.

Q. Well, now then, if that time element can be reduced by the railroad on the particular shipments, for the movement of which you are using the railroad, both in-bound and out-bound, that would be of benefit to your company, would it not?

A. If they could reduce it?

Q. Yes.

A. Why, yes, sir; if they could reduce the time required, that would be a benefit to us, certainly.

Q. Yes.

A. Very obviously.

Q. Regardless of whether it was one shipment, or ten shipments.

A. Yes.

Q. To whatever extent it was, it would be a benefit to you.

A. Well, yes, sir; that is true; but they would have to make a very substantial reduction, I would say, in order to interest us, however.

Q. But in general, whatever reduction they might make, would be of just that much benefit to you, would it not?

A. Yes.

Q. To whatever extent they did improve the service.

A. Oh, yes; that is true, obviously; any improvement in the service would be an improvement, obviously.

Q. Yes; and would be a benefit to you, would it not?

A. Well, it would be a benefit to us if we were able to use the service after they had improved it, if they were able to improve it.

Q. Well, now, then, I am talking about the shipments that you actually are sending that way by The Pennsylvania Railroad, and the shipments that you actually are receiving by The Pennsylvania Railroad.

A. Yes.

Q. As far as those particular shipments are concerned.

A. Yes.

Q. Whatever the improvement might be, you would like to have it, would you not?

A. Very much.

Mr. HARRY YOCKEY. That is all.

805 Mr. Des Roches. Just à moment.

Redirect examination by Mr. DES ROCHES:

Q. Mr. Moore, you would not be satisfied with a saving of 24 hours in time, in the case of a shipment that the railroad took eight days to deliver, would you?

A. No, sir; I certainly would not; and I would say frankly that I am totally dissatisfied with the railroad service. We do not use it, as I stated before, except in rare instances. As a matter of fact, we rarely ever use it, and I don't know just exactly why we ever do use it.

Q. In other words, then, do I correctly understand your position to be that you would require a saving in time of more than 24 hours, or even a 48-hour saving, having in mind the service that you are getting at the present time from the railroad?

A. Yes, sir; that is correct. I would require a terminal service; I would require an agent who knew his business; I would require somebody who was on the job, to answer the telephone when I rang it; I would require somebody who would solicit my business, and would call around once in a while to find out in what way he could help us—instead of just taking the business when we have no other alternative, except to give it to them.

Q. And are those things, which you have just enumerated, which you say you would require, in existence in your transportation service at the present time?

6 A. Not in connection with the railroad, they are not, and

most distinctly not; no, sir.

Mr. DES ROCHES. That is all.

Mr. BARKELL. Are there any further questions?

Mr. HARRY YOCKEY. I think that is all.

Mr. CLARDY. I would like to ask the witness one or two questions, your Honor.

By Mr. CLARDY:

Q. Witness, Mr. Yockey asked you this question in substance: no matter how infinitesimal—that is what the question implied—the improvement might be, would it not still be of some benefit to you?

Mr. HARRY YOCKEY. Just a moment.

Mr. CLARDY. If I may finish my question.

Mr. BARKELL Go ahead and finish your question.

Mr. HARRY YOCKEY. Yes.

By Mr. CLARDY:

Q. Now, my question is on the same premise as his, and I ask you if that improvement in the rail service were to be given you by the use of some existing motor carrier service already in the field, we lid that be just as satisfactory to you as having The Willett Company perform that service?

A. I am not familiar with The Willett Company.

Q. That is, the applicant here.

A. Oh.

Q. With that in mind, do you understand the question that I am putting to you, now?

807 A. I think so.

Q. May we have an answer, then?

A. Wherever the service could be facilitated, or improved, why,

of course, I would be delighted, and obviously so.

Q. But my question, Witness, is, would it make any difference to you whether it was The Willett Company that rendered the service, or any one of these other carriers that have been named here?

A. Oh. I misunderstood your question. No, sir, it would not; it would not make the slightest difference.

Q. It would be just as agreeable to have one of the carriers already in the field serve you, as it would be to have The Willett Company render the service, then, would it?

A. Perhaps I can answer the question this way, by saying that I would be very happy to get any extra service, or any bet-

ter service, that might be made available, from whatever source it might come.

Mr. CLARDY. I believe that is all.

Mr. BARKELL. Are there any further questions of the witness?

Mr. HARRY YOCKEY. Nothing.

Mr. BARKELL. If there are no further questions, the witness is excused.

(Witness excused.)

Mr. BARKELL. I would like to announce at this time, gentlemen, that in the event that it is necessary for us to continue this hearing over into tomorrow, this same room will be available.

Mr. CLARDY. It will be?

Mr. BARKELL. Yes. So if we do have a hearing tomorrow, you are all on notice that we will reconvene here. Call your next witness, please.

Mr. Des Roches. Mr. Fleser.

VICTOR S. FLESER was sworn and testified as follows:

Direct examination by Mr. DES ROCHES:

Q. Mr. Fleser, will you give your full name to the Reporter, please.

A. Victor S. Fleser.

Q. Where do you live?

A. Moline, Michigan.

Q. What is your business?

A. Farm implements.

Q. Do you operate a hardware store in Moline?

A. No; farm implements.

Q. Just farm implements?

A. Exclusively.

Q. How long have you been in business there?

A. Approximately four years.

Q. How large is Moline?

A. 350.

Q. The population is approximately 350?

A. Why, somewhere along in there; yes, sir, around 350 or 400. I don't know just exactly the figure.

Q-Are there any industries located there?

A. No.

Q. Are there very many, if any, shippers of freight in the city of Moline—

A. No.

Q. Or is it just a village?

A. Just a village.

Q. Just a small point.

A. Yes, sir.

Q. With a store or two?

A. Yes, sir. There is a drug store.

Q. A drug store?

A. Yes.

Q And some grocery stores?

A. Yes.

Q. And that is about all that there is there in the way of business, other than your own organization; is that correct?

A. Yes.

Q. Now, I take it that you receive incoming freight at your place of business.

A. Yes.

Q. From various points in the United States?

810 A. Yes, sir.

Q. Will you tell the Board from what principal points in the United States you receive incoming shipments?

A. Why, we get in shipments there from Milwaukee, Wisconsin, and from LaCrosse, Wisconsin, and also from La Porte, Indiana.

Q. Do you have any outgoing shipments?

A. We'don't have any outgoing shipments of freight at all; no, sir.

Q. How are your shipments, your incoming shipments, being handled at the present time, in the way of transportation service?

A. Why, in carload lots—that is, some of them are in carload lots, and others are just local freight.

Q. How many times in the course of a year do you receive ship-

ments in carload lots?

A. Well, I believe we have had approximately 12 cars come in, so far this year.

Q. 12 cars this year?

A. So far; yes.

Q. And the balance of your incoming freight is handled by what method?

A. Truck.

Q. By truck.

A. Yes, sir.

Q. What percentage of the whole of your freight, the entire volume of your freight, would you say is handled by motor common carrier?

A. Well, that particular tonnage would be very light, I would say, because it consists just of small parts repairs, and so forth, and so on.

Q. What can you say as to the present service that you are receiving from the motor common carriers?

A. Very satisfactory.

Q. Insofar as you are personally concerned, would you say that you have any need for any additional transportation service?

A. I wouldn't say so; no, sir.

Mr. DES ROCHES. That is all.

Mr. BARKELL. Cross-examine.

Cross-examination by Mr. HARRY YOCKEY:

Q. May I have your name again, sir?

A. Fleser.

Q. Mr. Fleser, are you using Pennsylvania Railroad service at the present time for the movement of any of your less than carload shipments in interstate commerce?

A. No.

Q. How long has it been since you had occasion to use The Pennsylvania Railroad on a less than carlead shipment in interstate commerce?

A. Oh-

Q. Approximately.

A. I couldn't hardly answer that question; I couldn't secall, because we don't get but very little in that way. I

might add that the railroad has got an agent who is there only a couple of hours per day, and it makes it very inconvenient.

Q. Well, approximately how long has it been since you used The Pennsylvania Railroad on a less than carload shipment?

A. (No answer.)

Q. Do you have any idea?

Mr. Lindstrand. Just a moment. Would you go back, please, Mr. Reporter, and read the last answer of the witness.

(Answer read.)

Mr. HARRY YOCKEY. I misunderstood his answer. I move that that the answer be stricken from the record as not being responsive to the question.

Mr. CLARDY. Oh, I think it is.

Mr. BARKELL. Read the question, please.

(Question read.)

Mr. CLARDY. I submit, your Honor, that the answer is clearly responsive to the question.

Mr. EGGERS. No.

Mr. BARKELL. No; that answer is not responsive. I think the witness can answer the question.

Mr. HARRY YOCKEY. I think the last portion of the answer, anyway, should be stricken out, after he says that he has not had very many.

Mr. BARKELL. Answer the question as it was put to you, 813 Mr. Witness.

A. How long has it been since I had one?

By Mr. HARRY YOCKEY;

Q. Yes; how long has it been since you had a less than carload shipment move in interstate commerce over The Pennsylvania Railroad?

A: Well, now, let me see. I can't tell you just exactly, but I would say probably around eight months ago, or maybe it was even a little longer than that. Maybe a year ago.

Q. That is all right. I do not expect you to pin yourself down

to an exact date. It was something less than a year ago. .

A. Yes.

Q. Where did that particular shipment come from?

A. Well-

Q. If you recall.

A. It would be pretty hard for me to answer that, too, because it is hard for me to recall: Let me see, now. Well; I would say that shipment came probably either from La Porte, Indiana, or from Milwaukee, Wisconsin.

Mr. HARRY YOCKEY. That is all.

Redirect examination by Mr. Des/Roches:

Q. Now, Mr. Fleser, Mr. Yockey just asked you the question as to how long it had been sine you had used railroad service in connection with the movement of a less than carload shipment.

A. Yes.

Q. In the first answer that you made to his question, you started to say something about being placed at an inconvenience of some sort or other.

A. Yes.

Q. I am not sure that I understood your answer. Will you

state again, please, what that inconvenience is!

Mr. HARRY YOCKEY. Well, now, just a moment. That portion of the answer was stricken; if the Joint Board please. That is no longer in the record.

Mr. DES ROCHES. Nevertheless, I submit that I have a right to

go into that now, and ask him to elaborate on that.

Mr. HARRY YOCKEY. Oh, no. That was objected to, and there was a motion to strike, and the Joint Board granted the motion, if I recall correctly.

Mr. CLARDY. I do not believe there was any ruling.

Mr. Des Roches. Come to think of it, I do not believe that the Board did make a specific ruling on counsel's motion.

Mr. BARKELL. Well, if we did not do so in so many words, the record may show that the intention was to strike the answer to that particular question.

Mr. HARRY YOCKEY. Well, then, it is out of the record, and I

object to counsel's question on that ground.

Mr. Des Roches. But regardless of what may have happened, as to that particular answer, I have the right at this time to ask him a direct question regarding what he started to say.

Mr. BARKELL You are asking him a direct question now.

Mr. Des Roches. Yes.

Mr. Harry Yockey. About something that is not in the record.
Mr. Des Roches. The answer that was stricken out on Mr.
Yockey's motion, was an answer to a question directed to the
witness by Mr. Yockey on cross-examination; and the answer was
stricken as not responsive.

Mr. BARKELL Yes.

Mr. DES ROCHES. Now, if the Board please, I am directing another question, a direct question, to the witness.

Mr. HARRY YOCKEY. Will you read that question please, Mr.

Reporter?

(Question read:)

Mr. Des Roches. Strike it out.

By Mr. Des Roches:

Q. Mr. Fleser, you have not used rail service in connection with the movement of any less-than-carload shipment for some time, have you?

A. No.

Q. Why not?

A. Because of the inconvenience.

Q. Can you be a little bit more explicit as to that? Because of the inconvenience in what way?

A. Why, as I tried to tell you before, because we don't have any agent there, except for about two hours per day.

Q. Is there a railroad station at Moline?

A. Yes, sir.

Q. Is there an agent stationed there at all times?

A. No.

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Q. Are there any transportation facilities connected with the railroad at Moline?

A. As to passenger service?

Q No; truck service.

A. Yes.

Q. When a shipment comes in, a less-than-carload shipment, by rail into Moline, how do you get delivery of that shipment to your place of business there?

A. Oh, I beg your pardon. I misunderstood your last question. There is not any truck service maintained there by the railroad company; no, sir.

Q. There is no truck service of the railroad?

I. No.

Q. Well, then, how do you obtain delivery at the present time of a less-than-carload shipment from the railroad depot to your place of business?

A. We have to go after it.

Q. You have to go after it yourselves?

A. Yes.

Q. And how do you secure your delivery when a less-thantruckload shipment comes in by a common motor carrier?

A. Delivered direct to our door.

Q. In that case it is delivered direct to your door.

A. Yes, sir.

Q. Is that a service that you feel is desirable!

A. Very much so.

Q. Is that one of the reasons why you feel you need motor carrier service?

A. Yes.

Q. Because you want, and they give you, that expedited service?
A. Yes, sir.

Mr. DES ROCHES. That is all.

Mr. BARKELL. Are there any further questions?

Mr. HARRY YOCKEY. Yes.

Re-cross-examination by Mr. HARRY YOCKEY:

- Q. Mr. Witness, does the time element, the time involved, enter into any phase of the situation, as to why you do not use the rail service?
 - A. The time element?

Q. Yes.

A. How do you mean !

Q. I mean, the time that is involved, the time it takes to transport a rail shipment.

A. Well, the fact of the matter is, I have used the service, the railroad service, so very rarely, that it would be pretty diffi-

cult for me to say as to that, because the service that we have had there, as far as the railroad is concerned, has been

very unsatisfactory; there is the inconvenience that I told you about, with no agent there; and we have just got to go up there and get it when it comes in, when he is there. Otherwise, we will have to wait another day before we are able to get it.

Q. But you do not have any conception of the time element that enters into those shipments by railroad, as far as you are concerned?

A. Why, no, sir; I really couldn't say. I haven't been using it, so I wouldn't know.

Q. You would not know.

A. No.

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Q. But if the service, the railroad service, were improved, you would like to have that improved service, would you not?

A. Well, I don't use the railroad, but if I did, possibly, why, I would like to have an improved service; yes. Anybody would

Q. You would like to have an improved service.

· A. Yes.

Q. Whether that quicker delivery was effected by having a truck operating through there, or however it might be; is that not correct?

A. Yes.

Mr. HARRY YOCKEY. That is all.

Mr. Des Roches. Just a moment.

819 Redirect examination by Mr. Des Roches:

Q. If I understand you correctly, Mr. Fleser, you are perfectly satisfied with your present service; is that correct?

A. Yes.

Q. So that any improvement in the rail service, so far as you are concerned, would not mean anything, would it?

A. Why, as far as I am concerned, I don't see how it would; no, sir; because I am satisfied with the service that I am getting now.

Q. Well, I say, any improvement, then, in the rail service, would not mean anything particularily to you, would it?

A. No.

Mr. DES ROCHES. That is all.

A. (Continuing), They couldn't improve it, as far as I am concerned.

Mr. DES ROCHES. That is all.

Mr. BARKELL. If there is nothing further

Re-cross-examination by Mr. HARRY YOCKEY:

Mr. Barkell. Well, now, just a moment, Mr. Yockey. Let us not waste all day cross-examining and re-cross-examining the witness on a service that he says he is not using, and is not familiar with.

Mr. HARRY YOCKEY. All right.

Mr. Clardy. And by the way, if I understand it correctly, 820 there is nothing in this application that involves keeping a station agent at that point any longer than he is kept there at the present time, that I know of—is there?

Mr. HARRY YOCKEY Well, now, why go into that? That has nothing to do with the issue here.

Mr. CLARDY. You went into it.

Mr. HARRY YOCKEY. No; I did not.

Mr. BARKELL. Are there any further questions of this witness, gentlemen?

Mr. DES ROCHES. That is all.

Mr. BARKELL. If not, the witness is excused.

(Witness excused.)

-Mr. BARKELL. Call your next.

Mr. DES ROCHES. Mr. Pool.

CLAYTON POOL was sworn and testified as follows:

Direct examination by Mr. DES ROCHES:

Q. Mr. Pool, will you give your full name to the Reporter, please.

A. Clayton Pool.

Q. Where do you live!

A. Wayland.

Q. Michigan? A. Yes.

Q. What, is your business?

821 A. The wholesale and retail distribution of petroleum products; and agent and distributor for the Gulf Refining Company.

Q. How large a town is Wayland?

A. About 1,000.

Q. Is there any leading industry in the town?

A. Why, the only leading industry there, that I know of, is the Pet Milk plant there.

Q. Employing how many men?

A. Oh, I dare say, just from what I know about it, employing in the neighborhood of between 75 and 100 men.

Q. That industry has been there for some time, has it?

A. Yes.

Q. A good many years?

A. A great many years.

. Q. How long have you lived in the village of Wayland?

A. About 16 years.

Q. 16 years!

A. Yes, sir.

Q. Do you have any incoming freight?

A. Oh, yes.

Q. Do you have any outgoing freight to any extent?

A. Very little

Q. Does your incoming freight come to you from points outside of the state of Michigan?

A. Yes.

Q. What points?

A. There are one or two points outside the state.

Q. What are those points?

A. One of them is Toledo, Ohio, and the other one is Philadelphia.

Q. Philadelphia, Pennsylvania?

A. Yes, sir. I get in about one or two shipments per year, I would say, from Philadelphia.

Q. How are those shipments being handled at the present

time !

A. Why, the shipments from Philadelphia have been coming in in what we term split cars. In other words, I am unable to handle a full car of this particular product, you understand, so that it comes in as a stop-over. Kalamazoo gets, probably, part of the car, and the rest of it comes in to me; or the full car may be pulled into my place, and part of the car taken out at my place, and then it is moved on into Grand Rapids.

Q. I see. So far as you are concerned, then, it is a less-than-

carload shipment?

A. Yes.

By Mr. EGGERS:

Q. Right there, let me ask you: what product is it that you are handled, or interested in?

A. The product that comes that way?

Q. Yes.

A. Motor oils and greases.

·Q. In cans or drums.?

823 A. In cans, and drums, and various packages.
Mr. EGGERS. All right.

By Mr. DES ROCHES:

Q. You are agent at Wayland, I believe you stated, for the Gulf Refining Company; is that correct?

A. Yes.

Q. Agent and distributor, I believe you said.

A. Yes.

Q. In the village of Wayland.

A. Yes.

Q. And the balance of your incoming freight is handled-

A. By permitted carriers.

Q. Common motor carriers.

A. Yes.

Q. Interstate freight, we are talking about.

A. Yes.

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Q. State whether or not the service, which those particular carriers are rendering your company at the present time, is satisfactory.

A. Very satisfactory.

Q. You have no reason to complain, then, about the existing transportation service which your company is receiving, have you?

A. None whatever.

'Q. Insofar as you are concerned, or insofar as your company is concerned, would you say that there is any need for any additional transportation service at Wayland, Michigan!

A. I don't think that there is any need for any additional transportation service there; no, sir,

Mr. DES ROCHES. That is all.

Mr. BARKELL, Cross-examine.

Cross-examination by Mr. HARRY YOCKEY:

Q. Mr. Witness, these shipments which come from Toledo, Ohio, are split, you say, between you and—

A. No; Philadelphia. Q. From Philadelphia?

A. Yes; and from Pittsburgh, some of it.

Q. Pittsburgh?

A. Yes, sir. Some from Pittsburgh, and some from Philadelphia. That comes either from Philadelphia or Pittsburgh, where the Gulf Refining Company has two of its large refineries.

Q. Do you ever have any less-than-carload shipments, aside from those two points, come in over the Pennsylvania Railroad!

A. No.

Q. Now, then, if those particular shipments could be expedited in their movement, that is, if you could get them from 24 to 48 hours quicker than you have been able to get them, would that be of any value to you?

A. You say, if we could get them I don't know if I just get

that question. Will you state it again.

Q. If the delivery of your less-than-carload shipments could be expedited or speeded up from 24 to 48 hours, that would

825 be of some service to you, would it not?

A. Weli; now, as far as those less than-carload shipments which come from Philadelphia or Pittsburgh are concerned, or wherever they might come, from, really, I wouldn't have any way of telling whether or not the railroad company would be able to speed that service up by 24 hours, or not.

Q. I am asking you, if they can; assuming that they can. If they can give you a quicker delivery by from 24 to 48 hours, that

would be an advange to your business, would it not?

A. Oh, I don't believe that it would be of any particular advantage to us; no, sir.

Q. Why not?

A. Well, for the simple reason that most of those products are usually ordered in advance, under our specified system of ordering, so that the matter of a day or two in the time when they might get in, wouldn't make any particular difference to me, as far as most of my stuff is concerned.

Q. It wouldn't make any difference to you at all-

A. No particular difference.

Q. As to when they delivered those shipments?

A. No.

Q. Is that also true of your shipments by truck?

A. It isn't true of shipments within the state.

Q. Within the state?

A. Well, yes.

826 Q. Well, I am talking now about interstate shipments.

A. Interstate?

Q. Yes; from outside the state.

A. Well, it still wouldn't make any particular difference to me,

as far as interstate is concerned; no.

Q. Do I correctly understand you to mean, Mr. Witness, that

the time element does not enter into the delivery of your shipments by rail from any point?

A. Not as far as a day or two is concerned; 24 to 48 hours, say;

no, sir. If it was going to be longer than that, though, several

days, that would make a different situation.

Q. But a saving, or a speeding up in time of from 24 to 48 hours, would not mean anything to you?

A. No.

Q. Either by truck or rail?

A. No.

Mr. HARRY YOCKEY. That is all.

Mr. BARKELL. Are there any further questions of the witness?

Mr. CLARDY. Yes.

By Mr. CLARDY:

Q. Witness, where did you say this car goes first, before it moves on to you?

A. If Kalamazoo has an order in there for a part-car at the same time I do, why, then the car stops first over at Kalamazoo.

By Mr. BARKELL:

Q. Let me ask you right there: do you have anything to do with the routing of this traffic?

A. Do I?

Q. Yes.

A. No.

Q. It is routed by the Gulf Refining Company, is it?

A. It is routed by the Gulf Refinery.

Mr. BARKELL. Go ahead.

By Mr. CLARDY:

Q. Does it move to the initial point of Kalamazoo, where there is a combined carload for the two points?

A. Yes, sir; it does, if it all comes in the one car at the same

time.

Q. Yes. When it moves in that fashion, it always goes to Kalamazon first, does it—

A. Yes.

. Q. Or does it sometimes come to your place first, and then is it taken over to Kalamazoo?

A. No, sir; Kalamazoo leads every time. That is, whenever I have received a part-car with Kalamazoo, the car has already stopped at Kalamazoo first.

Q. So that-

A. Of course, if I might just add—there would not be—well, never mind that, either. I guess that answers the question.

Q. So that, then, unless there is something in this application that deals with a transfer, under their proposed set-up, from a

... car to a truck at Kalamazoo, their trucks could not handle

828 it, could they?

Mr. HARRY YOCKEY. Just a moment. I object to the question, if the Joint Board please, as being entirely leading, and as getting the witness into a matter with which the witness is not acquainted.

Mr. CLARDY. Oh, no.

Mr. BARKELL. What are you trying to get at, now, Mr. Clardy?

Mr. CLARDY. I want to develop-

Mr. BARKELL. The witness has testified that a speeding up of

from 24 to 48 hours would not make any difference to him.

Mr. Clardy. I want to develop, your Honor, that so far as this particular movement is concerned, whether 24 or 48 hours, or any other number of hours, would be of any value to this witness or not, it could not be handled that way. I say that, because under the application, as they have explained it, the key set-up would not permit such handling at Kalamazoo; and I want to show very clearly on this record that this system cannot be used there.

Mr. HARRY YOCKEY. If the Joint Board and the Commission please, this witness has testified several times here, now, that it would not make any particular difference to him if the service was speeded up from 24 to 48 hours. Now, why go any further into it!

Mr. Eccess. He does not control the routing of the ship-

829 ments, either, according to his own testimony, so I do not think he would have very much knowledge of how the shipments are handled, since he does not have any control over them.

Mr. CLARDY. That is an added reason, your Honor, why our position is sound. I want to get it clearly into this record; if I can, that unless there is something in the application that will permit a transfer at Kalamazoo, it cannot be of any benefit to this man, and could not be handled by truck anyway. That is all I am trying to develop by that last question.

Mr. BARKELL It seems to me that is already in the record, Mr.

Clardy.

Mr. CLARDY. Well, then, I will get at it another way. Strike out that question.

By Mr. CLARDY:

Q. Witness, the particular car that has one of these shipments in it is never broken up any place but at Kalamazoo, is it?

A. Well, it just depends on what sort of a shipment is going to the consignee at either one of the two points. In other words, if I can handle a full carload, the car will come right straight through from Philadelphia or Pittsburgh to my place; but if I cannot handle a full carload, why, then there is a stop-over of that car, over at Kalamazo and part of the car is unloaded at Kalamazoo, and then the rest of it comes on into Wayland.

Mr. CLARDY. Thank you.

830 Mr. BARKELL. Are there any further questions of the witness?

Mr. Des Roches. Nothing further.

Mr. HARRY YOCKEY. I have no further questions.

Mr. BARKELL. You may be excused.

(Witness excused.)

Mr. BARKELL. Call your next.

Mr. Des Roches, Mr. Patterson.

THOMAS CLYDE PATTERSON was sworn and testified as follows:

· Direct examination by Mr. Des. Roches:

Q. Mr. Patterson, will you give your full name to the Reporter, please.

A. Thomas Clyde Patterson.

Q. Where do you live?

A. Martin, Michigan.

Q. What is your business?

A. Hardware and implements.

Q. How large is Martin?

A. About 400.

Q. How many?

A. 350 to 400.

Q. Are there any industries located there?

A. No.

Q. No manufacturing?

831 A. No, sir.

By Mr. EGGERS:

Q. Will you locate Martin for us, please?

A. How is that ?

By Mr. DES ROCHES:

Q. Where is Martin?

A. Why, Martin is located between Kalamazoo and Grand Rapids; just about half way between.

Mr. DES ROCHES. It is on one of the routes covered by this appli-

cation, your Honor.

By Mr. Des Roches:

Q. Your business again?

A. Hardware and implements.

Q. I take it you have incoming freight.

A. Yes.

Q. How often do you have occasion to have freight moving into your place of business there at Martin?

A. Well, during the summer months quite often.

Q. Quite often-

A. During the summer; yes, sir.

Q. Do you receive some shipments coming from points outside of the state of Michigan?

A. Yes; but very few.

Q. Very few.

A. Right.

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Q. How do those shipments move; that is, by rail, or by motor truck?

A. Well, most of them by truck, I would say.

Q. Most of them by truck?

A. Yes.

Q. Can you give us the names of the common motor carrier, or common motor carriers, that are handling those shipments for you?

A. Yes, sir. We have specified Associated.

Q. Associated Truck Lines.

A. Yes, sir.

Q. And is that particular company rendering you good service at the present time?

A. Absolutely; yes.

Q. Do you have any reason to complain about the service that that company is rendering you?

A. No.

Q. Insofar as you are personally concerned, then, would you say that you have any need for additional transportation service?

A. No. sir: I would not.

Qr Now, have you ever used the service of the railroad in connection with a less-than-carload shipment?

A. Oh, I have; yes.

Q. You do have such shipments from time to time?

A. That was years ago.

Q. How long has it been since you have used the service of the railroad?

A: Well, now, let me correct that. We still get, now and then, a shipment by The Pennsylvania Railroad.

Q. I take it, in your business there in the village of Martin, the element of time does not mean very much to you, does it—to the extent, say, of 24 or 48 hours?

A. (No answer.)

Q. In connection with incoming shipments, I am talking about.

Mr. HARRY YOCKEY. Now, just a moment. I want to object, if the Joint Board please, not so much to that particular question, but to any future question is leading.

Mr. Des Roches. It is the same identical question, if your Honors please, that has been asked every witness who has been produced here today, on cross-examination; and I submit, I am entitled to ask the same sort of question. I am just asking him whether the time element does or does not mean anything to him.

Mr. HARRY YOCKEY. The question is objectionable.

Mr. BARKELL. And are you objecting to it?

Mr. HARRY YOCKEY. Yes; I am objecting to it, your Honor, on the ground that it is leading.

Mr. BARKELL. The objection is sustained.

Mr. DES ROCHES. It is in issue here; they have made it an issue here.

Mr. Eccers. The question was a leading question, though, counsel. You will not deny that.

834 Mr. Des Roches. But he did not make his objection on that ground, as I understood it.

Mr. HARRY YOCKEY. Yes, I did.

Mr. BARKELL. He is making the objection on that ground now, and the objection is sustained. Proceed.

By Mr. DES ROCHES:

Q. Mr. Witness, I will ask you to state whether or not the time element is vital, insofar as you are concerned, in connection with deliveries of your incoming freight?

A. In most cases; yes.

Q. I will ask you to state whether or not a difference of 24 to 48 hours in the time of delivery is vital to you, in connection with your shipments of incoming freight?

A. Do you mean a delay of that much?

- .Q. Yes.
 - A. Oh, it would be in a lot of cases; yes.

Q. In a lot of cases?

A. Yes.

Q. Will you give us the reason or reasons why you are using the service of common motor carriers in the light of the statement which you have just made?

A. Yes.

- Q. Why, I say?
- A. Because we are getting very prompt service.
- Q. And you are well satisfied with it; are you?

A. Yes.

Mr. Des Roches, That is all.

835 Mr. BARKELL. Cross-examine.

Cross-examination by Mr. HARRY YOCKEX:

- Q. Mr. Witness, when you refer to prompt service, you mean, do you not, that you get quicker service by truck than you do by railroad?
 - A. Yes.
- Q. How much of a quicker service do you get from a given point!

A. How much quicker?

Q. Yes.

A. Oh, we can get stuff in from Grand Rapids by truck by calling up in the morning, and we will get it there by noon.

Q And how long does it take on the railroad?

· A. Well, now, I don't know just exactly how they are running right now, but they use to run that service every other day.

Q. Well, now, then, if that service could be speeded up 24 hours, by the railroad, that would be a benefit to you, would it not?

A. Well, I don't think there is any need for it.

Mr. CLARDY. Just a moment. As I understand it, the witness is talking about a movement from Grand Rapids, which would be intrastate.

The WITNESS, Yes.

Mr. HARRY YOCKEY. Oh, I did not so understand him.

The WITNESS. That is right.

Mr. HARRY YOCKEY. Let us strike everything from the record, then, about Grand Rapids.

836. Mr. EGGERS. Yes, that would be intrastate.

Mr. HARRY YOCKEY. Let us strike everything pertaining to Grand Rapids.

Mr. BARKELL. It may be stricken.

By Mr. HARRY YOCKEY:

Q. Well, now, from what points do you receive shipments by truck, interstate?

A. Lansing, Detroit-

Mr. Eggers. No. You are still talking about intrastate points, now.

The WITNESS, Well-

Mr. Eccess. He means points outside the state of Michigan.

Mr. HARRY YOCKEY. Outside.

The WITNESS. Outside Michigan?

Mr. HARRY YOCKEY. Yes.

Mr. BARKELL. Interstate points.

A. Well, now, let me see. Well, there would be Peoria, Illinois, and South-Bend, Indiana.

By Mr. HARRY YOCKEY:

Q. All right. Let us take Peoria, Illinois. Do you receive those shipments by rail or by truck?

A, Truck.

Q. And how long does it take you to get one of those shipments in by truck?

A. From Peoria?

Q. Yes.

A. Well, now you have asked me something there that I can't tell you without looking at the freight bill.

Q. Can you give us a general idea!

A. Oh, I would say two or three days.

Q. Two or three days?

A. Yes.

Q. Do you get those shipments in by truck more quickly than you can by rail from that point?

A. Yes.

Q. How much quicker?

A. Well, I don't know, but as far as Chicago is concerned, from Chicago it is anywhere from two to four days.

Q. By rail?

A. Yes.

Q. From Chicago?

A. Yes.

Q. Well, now, we were talking about Peoria. How long would it be from Peoria?

A. Oh, if Chicago takes from two to four days, it would be another day, at least, I would say, from Peoria.

Q. Well, now, Mr. Witness, would it not be of advantage to you in your business if your shipments by rail could be shortened from 24 to 48 hours; that is, in the time of delivery, if that could be done?

A. Oh, you have asked me a foolish question.

Mr. Eggers. Well, now-

Mr. Des Roches. Just answer the question.

Mr. BARKELL. That is not a foolish question.

Mr. EGGERS. That is what we are interested in knowing.

A. All right. Yes.

Mr. CLARDY. Read the question to the witness, please, Mr. Reporter.

Mr. BARKELL. He has answered.

By Mr. HARRY YOCKEY:

Q. Your answer is "Yes," is it?

A. Yes.

Mr. HARRY YOCKEY. That is all.

Mr. BARKELL, Is that all?

Redirect examination by Mr. DES ROCHES:

Q Mr. Patterson, is there a railroad station in the city of Martin or in the village of Martin?

A. Yes.

Q. Is there an agent stationed there all the time?

A. Yes.

Q. Are there any facilities available for delivering freight that comes into that station to the stores in Martin?

A. No.

Q. In other words, then, when you get in a shipment by rail there, you have to go down to the railroad station and pick it up yourself, do you?

A. Yes, sir.

839. By Mr. CLARDY:

Q. Is the answer "Yes"?

A. Yes.

By Mr. DES ROCHES:

Q. That is correct, is it not?

A. Yes, sir.

Mr. DES ROCHES. That is all.

Mr. BARKELL. Are there further questions?

Mr. HARRY. YOCKEY. That is all.

Mr. CLARDY. Just a moment, Witness.

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Mr. Harry Yockey. Now, if the Joint Board and the Examiner please, may I say this, and I say it in all seriousness: I think that what Mr. Clardy is doing here, waiting until the witness has been examined on redirect, and then beginning his own examination, is unfair to the cross-examining counsel. In other words, the witness is put on and examined by his own counsel on direct, and then he is cross-examined by his own counsel on redirect by his own counsel, and then Mr. Clardy comes along and goes into an entirely different line of questioning, which means that I have got to come back again, and cross-examine further on his questions.

Mr. CLARDY. Well, now, I am certainly entitled to examine this witness, or any other witness, and I am not at all particular as to

the order in which it is done.

Mr. BARKELL Off the record.
(Discussion outside the record.)

Mr. Barkell. Back on the record. Do you have some safe questions of this witness, Mr. Clardy?

Mr. CLARDY. Yes.

Mr. BARKELL. You may proceed.

By Mr. CEARDY:

Q. Witness, Mr. Yockey asked you the question a moment ago here, as to whether an improvement of service, if it was improved, would be of some benefit to you, and you said that it would be.

-A. Yes.

Q. Now, may I ask you this: if the railroad service should be improved from Peoria, or Chicago, by from 24 to 48 hours, would that be sufficient of an improvement to make you use the rail service, instead of the truck service that you are using at the present time?

A. No.

Q. Why not?

Mr, HARRY YOCKEY. Now, just a moment. I want to object to that question. We are getting into another field, now.

Mr. CLARDY. Oh, no.

Mr. HARRY YOCKEY. We are not trying to take any business away from anybody.

Mr. CLARDY. Well, I wish-

Mr. HARRY YOCKEY. We are only trying to improve the existing service, and that is all we are trying to do.

Mr. CLARDY. I wish I could believe that. .

Mr. BARKELL That objection will be overruled. The witness may answer.

The WITNESS. How is that, again!

By Mr. CLARDY:

Q. Just tell us why you would prefer to use the present truck facilities, that you are now using, rather than the rail service, even

if the railroad did institute this new operation?

A. Why, I would still prefer to keep on using the truck service, because they deliver right to our door; and then the courtesy and cooperation that we have been getting from the truck drivers has been 100 percent.

Q. The service meets your needs, does it?

A. Yes.

Q. Or the needs of your organization.

A. Yes, sir.

Mr. CLARDY. That is all.

Mr. BARKELL. Now, Mr. Yockey, do you have any further questions of this witness?

Mr. HARRY YOCKEY. No.

Mr. BARKELL. If there are no further questions, the witness is excused.

(Witness excused.)

Mr. BARKELL. We will take a short recess at this time, before you put on your next witness.

Mr. DES ROCHES. Very well, your Honor.

: (A.short recess was taken.)

Mr. Barkell. Come to order, please, gentlemen. Let us have the next witness.

Mr. Des Roches. Mr. Gores.

J. E. Gores was sworn and testified as follows:

Direct examination by Mr. DES ROCHES:

Q. Mr. Gores, will you give your full name to the Reporter, please.

A. J. E. Gores.

Mr. BARKELL. Now, gentlemen, I want to say right here, that beginning with this witness, we are going to have direct examination, cross-examination, and then redirect, recross, and any other redirect, if any, by the same counsel, and not by four or five different people.

Mr. DES ROCHES. Why, if your Honor please, I thought that I

had been proceeding in a very orderly fashion here.

Mr. BARKELL, Yes, you have been, and I am not criticizing you. What I have in mind is, that we do not want any more of this indiscriminate examination, back and forth. Let us have that understanding right now, before you go any further with this

Mr. Des Roches. Very well.

By Mr. DES ROCHES:

- Q. Where do you live?
- A. Plainwell.
 - Q. Michigan?
- 843 A. Yes.
 - Q. What is your business?
 - A. Auto supplies and appliances.
 - Q. How large a town is Plainwell?
 - A. About 2,000.
 - Q. Located near Kalamazoo?
 - A. Yes.
 - Q. How far from Kalamazoo!
 - A. 12 miles.
 - Q. How long have you been in business at Plainwell?
 - A. Six years.
- Q. You have both incoming and outgoing shipments there at Plainwell, I take it, have you not?
 - A. Mostly incoming.
 - Q. Mostly incoming shipments?
 - A. Yes.
- Q. Does your freight move into Plainwell from points outside of the state of Michigan's
 - A. Yes.
 - Q. What points?
 - A. Chicago and Toledo.
 - Q. How is it being handled?
 - A. Truck.
 - Q. Is that service satisfactory?
 - A. Very.
- Q. What trucks—or rather, what common motor carriers are serving you at this time?
 - A. Associated.
 - Q. Associated Truck Lines?
 - A. Yes.
- Q. And for how long a period of time has that particular carrier been serving you?
 - A. About the same time.
 - Q. How long?
 - A. About six years.
- Q. You have no complaint to make against the existing service that you are receiving, have you?
 - A. None.
 - Q. Insofar as your own company is concerned, would you say
- Q. Are you getting an overnight delivery from Chicago at Plainwell?

A. No.

Q. Have you had occasion from time to time in the past to use the service of the rails?

A. No.

Q. Have you ever used rail service?

A. Very seldom.

Q. Are you getting an over-night delivery from Chicago at the present time, or not?

A. I am.

845 Q. Now, from—what did you say the other point was, from which your incoming freight moves?

A. Toledo, Ohio.

Q. You are using the service of the same carrier from both points, are you?

A. Yes.

- Q. And you are getting an overnight service from both points?
- A. Yes, sir-well, as far as Toledo is concerned, that takes about a day and a half.

Q. About a day and a half.

A. Yes.

Q. Daily service.

A. Yes. .

Q. Do you feel that any carrier, water, rail, or otherwise, could give you a better service than that?

A. No.

My. DES ROCHES. That is all.

Mr. CLARDY. May I inquire!

Mr. BARKELL. If you have any questions-

Mr. CLARDY. I have.

Mr. BARKELL. Can you ask your questions through Mr. Des Roches, and develop what you want to develop through him—that is, having him conduct the examination of the witness?

Mr. DES ROCHES. Oh, your Honor-

Mr. BARKELL, I mean, if you care to conduct the examina-846 tion that way.

Mr. CLARDY. I do not mind doing that, but I would like to ask just a question or two.

Mr. BARKELL. We do not want you to ask any of the questions

that Mr. Des Roches has asked, over again.

Mr. CLARDY. Oh, no. I am sorry, your Honor. I did not even know that he had started. I was out of the hearing room.

Mr. BARKELL. Off the record.

(Discussion outside the record.)

Mr. BARKELL. Back on the record. Proceed.

By Mr. DES ROCHES:

- Q. How many other carriers serve the city of Plainwell, Mr. Gores?
 - A. Other than Associated?

Q. Yes.

A. Well, now, let me see. There is Keeshin goes through there-Keeshin Motor Express, I believe; and there is A. & K.

Q. Any others?

A. That is about all I know of.

Q. How about Interstate Motor Freight System?

A. Oh, yes, Interstate goes through there, too.

Q. Have you had occasion in the past to use the services of those common motor carriers?

A. We always specify Associated.

Q. But the services of those carriers are available for your use, are they not?

847 A. Oh, yes.

Q. If you desire to use them.

A. Yes, sir.

Q. De you know whether or not those carriers maintain and operate terminals in the city of Kalamazoo?

A. Yes.

Q. Do they, to your knowledge?

A. Yes, sir.

Q. That is true of all of the carriers that have been mentioned, is it?

A. Yes, sir.

Mr. DES ROCHES. That is all.

Mr. BARKELL. Are there further questions?

Mr. CLARDY, That leaves me with just one question, that I would like to ask, your Honor.

By Mr. CLARDY:

Q. Witness, Mr. Yockey here has asked the other witnesses certain questions, that I think you have heard, with respect to whether or not an improvement in the service by speeding up the time of delivery on the part of the railroad would be of some benefit to them.

A. Yes.

Mr. HARRY YOCKEY. Well, now-

Mr. CLARDY. What is it?

Mr. HARRY YOCKEY. Never mind. Go ahead.

By Mr. CLARDY:

Q. I would like to ask you this question, Witness: if the railroad should by reason of having this application

granted, be enabled to furnish a service that is speeded up to the extent of 24 to 48 hours, and they actually do furnish that service, would that still be of any advantage to you; having in mind the existing truck service which you presently use?

A. No.

Mr. CLARDY. That is all.

Mr. BARKELL. Cross-examine.

Cross-examination by Mr. HARRY YOCKEY:

Q. Why would you not use that?

A. How?

Q. Why would you not use that service?

A. I wouldn't have to.

Q. Are you using railroad service at all at the present time?

A. No.

Q. On interstate shipments?

A. No.

Q. How long has it been since you did use rail service on interstate less than carload shipments?

A. About six years.

Q. Do you control all of the shipping—the routing on all of the shipments that come into your place?

A. Yes.

Q. There is nothing that you do not control?

849 A. No.

Q. I see. Well, you are not using the rail service at the present time, and it would not make any difference to you, then, whether it was good, bad, or indifferent, would it?

A. No.

Q. You would not use it, anyway.

A. No.

Mr. HARRY YOCKEY. That is all.

Mr. BARKELL. Is that all?

By Mr. CLARDY:

Q. Witness, your answer to Mr. Yockey's last question was bottomed, was it not, on your prior statement that you are getting as good a service as you could possibly receive, from the trucking companies that are serving you at the present time?

Mr. HARRY YOCKEY. Just a moment

A. Yes.

Mr. HARRY YOCKEY. I object to the question. Just a moment.

Mr. CLARDY. I just had the one question.

Mr. ARRY YOCKEY. I do not care whether you have one question, and hundred and one questions. We have started to go back and forth again, and that is the yery thing that the Joint. Board said they did not want. This is not redirect examination, now.

Mr. BARKELL. I thought you were through.

Mr. HARRY YOCKEY. I was through, as far as my cross-850 examination of the witness was concerned. Now, if Mr.

Clardy is going to ask questions of the witness on further direct, or redirect, or whatever it is, I am going to have to start in with my cross-examination all over again.

Mr. Des Roches. I do not see any particular force to Mr. Yockey's objection here, your Honor. After all, Mr. Clardy and I are representing different clients here, and I am not bound by any questions that Mr. Clardy may ask, and neither is Mr. Clardy bound by any questions that I may ask.

Mr. BARKELL. Let us not spend any further time arguing, gen-

tlemen. Are there any further questions of the witness?

Mr. HARRY YOCKEY. I have nothing further.

Mr. CLARDY. All right. That is all.

Mr. BARKELL. You are excused.

(Witness excused.)

Mr. BARKELL Call your next witness, please.

Mr. CLARDY, Mr. Linder, take the stand.

D. E. Linder was sworn and testified as follows:

Direct examination by Mr. CLARDY:

Q: Witness, identify yourself.

A. D. E. Linder.

Q. Where do you reside? A. Traverse City, Michigan.

Q. By whom are you employed?

851 A. Myself.

Q. What is the nature of your business?

A. Well, we handle tires and tukes, and allied products—repair products.

Q. Your company has been engaged in that line of business at Traverse City for how long?

A. Three years.

Q. In carrying on your business, do you have occasion to both ship and receive merchandise, or supplies of some sort or another, both in interstate commerce and intrastate commerce?

A. Yes.

Q. With respect to the interstate end of your business, would you tell us from what points, particularly, you receive freight, and to what points you ship?

A. Oh, we get in about 90 percent of our stuff, I would say, from Akron, Ohio; and the balance would be divided between

Toledo, Ohio, Chicago, and Waukesha, Wisconsin.

Q. How has that movement been handled in the past?

A. (No answer.)

Q. That is, with respect to the form of transportation?

A. Almost 100 percent truck.

Q. Has the service been speedy and satisfactory?

A. Yes.

Q. Has it completely met the needs of your company?

A. Yes.

Q. Now, you have been present during the hearing here today, I take it; have you not?

A. Yes.

Q. And you have heard at least some of the testimony that has been elicited on cross-examination by Mr. Yockey here, with regard to whether or not the business of particular witnesses would be benefitted if the railroad, The Pennsylvania Railroad, were to speed up its part of the operation by some 24 to 48 hours.

A. Yes.

Q. As they argue might be done here.

A. Yes; I think I heard most of it.

Q. Well, now, assuming that the improvement, that they claim, would take place, does actually take place. Would you tell me whether or not that would be of any particular use or benefit to you, having in mind the existence of the present motor carrier service which you are using?

A. A reduction of 48 hours of the eight or nine days' time, which it has taken to get freight from Akron, Ohio, to Traverse City, Michigan, would not materially help us in any way at all,

I would say; no, sir.

Q. So that even if they did that, then, would you be inclined to favor this new service which is proposed to be inaugurated by the railroad?

A. No.

Q. Now, has the war had any effect upon your business? A. Yes.

Q. Would you tell us what that effect has been?

· A. It has practically put us out of business, as far as the new time business is concerned. However, we still do a considerable amount of repairing, retreading, recapping, and so forth, and the general servicing of the tires of customers.

Q. That is in a limited measure, however. I take it?

A. Yes.

· Q. Because of the necessity for special preference orders-

A. Yes, sir. However, we do cover 11 counties, I might say, with this service.

Q. Is it fair to say, then, Witness, that the war, and the attendant orders of various governmental agencies that have resulted

therefrom, have materially decreased your need for transportation?

A. Decidedly so; yes.

Q. And so far as the forseeable future is concerned, is there any hope, or any belief on your part, that there will be any increase in your need for transportation?

A. No. sir, not as far as the immediate future is concerned; and

I should say not for at least three years.

Q. What particular carrier, or carriers, have been serving you in this in-bound movement that you have discussed?

A. Oh: Parker Motor Freight, for one; also Dallas L.

854 Darling; and the Wolverine Express.

Q. Has the service which has been rendered you by those carriers been uniformly good and satisfactory?

A. Over a long period; ves.

Q. Do you have any out-bound movement?

A. Yes.

Q. Consisting of what?

A. Oh, our out-bound shipments consist of tires that have been repaired, and new tires that go to the various commercial users, moving out to points in the 11 counties that we serve.

Q. That would be entirely intrastate, then, would it not?

A. (No answer.)

By Mr. BARKELL:

Q. That is all intrastate, is it not?

A. Yes.

Mr. BARKELL. We are not interested in any intrastate movements in this proceeding, so just omit that.

By Mr. CLARDY:

Q. Do you ship anything interstate?

A. Oh, there would be a little something; yes, sir; but hardly enough to mention, I would say.

Q. By the way, referring further to your in-bound movements: have they been truckload, less-than-truckload, or both?

A. Why, over the period of 12 months, I would say, we have had probably just one straight load.

Q. One truckload?

A. Yes, sir.

855 Q. And everything Ise has been less-than-truckload?
A. Right:

Q. Now, Witness, you mentioned, I believe, some eight or nine days, or something of that sort, referring to the rail time.

A. Yes, sir.

Q. Is that about the average time that you can expect a rail movement to take from such a point as Akron, Ohio?

A. That has been the experience that we had; yes, sir. At the time that there was a drivers' strike in Akron, we did receive several shipments over the rails, and at that time it took eight or nine days.

Q. And how long does it take by motortruck?

A. A night and a day.

Q. Pardon me?

A. I say, a night and a day,

Q. About 24 hours, do you mean?

A. Well, it would be about that—well, to be conservative, I would say about 48 hours; but 48 hours would be the outside. We have had shipments come in in a shorter time than that, but 48 hours would generally cover it, all right.

By Mr. EGGERS:

Q. That would be second-morning?

A. Yes.

Q. Second-morning delivery?

A. Yes, sir.

By Mr. CLARDY:

Q. Well, now, Witness, if a schedule were to be inaugurated by the railroad that involved a movement getting into your town at something like 8 o'clock p:-m., according to their exhibit 4, applicant's exhibit 4 here: would that be materially different from the hour at which the present motor carrier service arrives at your place!

A. 8 p. m.

Q. Yes.

A. We are closed at 8 p. m. With the problems that we have confronting us at the present time, if we order rires, we will say, from Akron, it is generally because we have already gone to the trouble of getting a permit; and somebody has a very definite need for those tires, and therefore, consequently, we are very anxious to get them out just soon as they come in, and as a result of that we are at the dock waiting to pick up our own freight when it comes in; although that is not necessary, just so that we will be able to service the customer at the very earliest possible moment.

Q. Did I correctly inderstand you to say, Witness, in a previous answer, that most of your movements get into Traverse City early

in the morning sometime?

A. Yes, sir-or that is, during the morning sometime; never later than two o'clock, anyway.

Q. What was that last?

A. We have never had anything come in any later than two o'clock.

Q. In the afternoon?

857 A. Yes.

Mr. CLARDY. That is all.

Mr. BARKELL. Cross-examine.

Cross-examination by Mr. HARRY YOCKEY:

Q. Mr. Witness, those shipments that you referred to, that you said took six to eight days to get from Akron. Ohio, to your place at Traverse City; were those shipments of tires?

A. Yes.

Q. And that was at a time when there was a strike on by the truck drivers in Akron, did you say?

A. Yes:

Q. How long did that strike last?

A. I couldn't say.

Q. Did you yourself make any particular investigation to ascertain as to why that delay came about?

A. No.

Q. That is, to find out as to whether or not it had occurred because of the strike of the truck drivers, with a resulting delay in platform service and delivery, or just what it was that had caused the delay?

A. No. sir.

Q. You do not know, then, how long those shipments, or any of them, were held up at Akron, do you?

A. No.

858 Q. That is, before leaving Akron?

A. No.

Q. Or how long they were in transit?

A. I can't give you the definite number of days, but I did talk with the shipping department of the General Tire & Rubber Company over the long-distance telephone, and I found out that they had been shipped, as I recall it now, five days before I placed the call; and then we had to wait four more days, as I recall it, before we finally received the merchandise.

Q. That particular merchandise normally, as I understand it, would have come by truck; is that correct?

A. Yes.

Q. How long did that strike last?

A. I couldn't say.

Q. Pardon me?

A. I don't know.

Q. Well, now, then, have you had any other experience, other than that one which you have just mentioned?

A. Well, I believe we had three shipments during that time.

Q. Three shipments!

A. Yes.

Q. How long did they take?

A. Well, as I stated before, it ran from eight to nine days. However, when we found that we were having trouble with our

Akron warehouse, we did business in Cleveland, and-

859 Q. Well, now then-

Mr, CLARDY. Just a moment.

Mr. Eccens. Let the witness complete his answer, please. Mr. Yockey.

Mr. HARRY YOCKEY. I am sorry. I thought he was through.

Finish your answer.

A. I was just going to say, then it came through in the normal way, as the result of our getting it from Cleveland, rather than from Akron.

By Mr. HARRY YOCKEY:

Q. And it came by truck?

A. Yes.

Q. Is that right?

A. Yes.

Q. Well, now then, is that the only experience that you have had, that you have told us about, now, with respect to the length of time involved in the movement of shipments out of Akron by rail?

A. That is all the experience that we have had out of Akron by rail; yes, sir. However, I might say, we had a similar experience at Waukesha, Wisconsin.

Q. Was there a strike going on there also?

A. No.

Q. Of drivers?

A. No.

Q. What was the difficulty there?

A. The merchandise was shipped by rail.

Q. Was that a less than carload shipment?

A. Yes.

Q. All right. Now, will you just tell us what your experience was in connection with that particular shipment?

A. Do you mean, as to the time?

Q. Yes, sir.

A. Why, if I recall it correctly, I think it took approximately seven days for that shipment to arrive.

Q. What did that shipment consist of?

A. Why, that particular shipment consisted of twelve jacks-hydraulic jacks.

Q. Well, now then, did the element of time have anything to do with that shipment?

A. Yes, sir, it did; because it so happened that that occurred at a particular time when we were very, very anxious to service snow plows, due to the unusual snow conditions that were prevailing in the northern part of Michigan.

Q. It did make some difference to you, then, did it, as to whether those jacks got in, so that you could service the snow plows, in

one, two, three, four, five, six, or seven days?

A. Yes, sir.

Q. Any kind of saving on those particular shipments, then, that could have been made, would have been a benefit to you, would it not?

861 A. Yes.

Q. Well, then, if the railroad, under the set-up that is proposed here, had been able, even though that particular shipment was delayed, to cut off one or two days of the time involved, that would have been of benefit to you, would it not?

A. Why, in a sense, yes

Mr. Eggers. What is that answer?

(Answer read.)

By Mr. HARRY YOCKEY:

Q. Well, it would have been a benefit, would it not?

A. Yes.

Q. Any saving in the movement of a shipment of that sort would be of benefit to your company, would it not?

A. If a statement is in order-

Q. No.

Mr. BARRELL. Just answer the question.

Mr. HARRY YOCKEY. Answer the question.

A. If it could have been done in that case, if there had been a saving, it would have been, yes, sir.

By Mr. HARRY YOCKEY:

Q. It would have been?

A. Yes, sir.

Q. And if like instances to that arose, whereby you could receive shipments of that type, under those circumstances; that would be of benefit to you in your business, would it not?

A. I don't get that.

Q. That is, I mean to say, if the railroad company can cut off from 24 to 48 hours of time, running time.

A. If that was possible, if the railroad was able to compete with

the running time of the truck, yes, sir.

Q. Well, now, Witness, I did not ask you anything about that. Please do not volunteer anything. Just answer the question. I am just asking you if less than carload shipments over the rail-

road can get from their point of origin to your town in from 24 to 48 hours less, under like circumstances, that would be of benefit to your company, under like circumstances, or under any circumstances, would it not?

A. (No answer.)

Q. I am not referring to the truck lines at all, now, Witness. I am just referring to the railroad.

A. Will you say that once more.

Mr. Eggers. Read the question

Mr. HARRY YOCKEY. Let me repeat it.

By Mr. HAERY YOCKEY:

Q. If, under circumstances such as you have described in your previous answer, the railroad can cut off from 24 to 48 hours of its running time, in the handling of shipments, that would be of benefit to your business, would it not?

A. Well, now, maybe I can answer the question this way, if I get it right; we don't order twelve jacks very often, you under-

stand---

 Q. I am not asking you anything about that at all, Mr. Witness.

Mr. BARKELL. Answer the question,

By Mr. HARRY YOCKEY:

Q. I say, if you do do that again.

A. Oh. Yes.

Q. All right. Now, other than that, have you ordered—or do you order any less than carload shipments interstate by rail!

A. No.

Q. That moves by truck entirely!

A. Yes.

Q. Why is that?

A. Because we get better service.

Q. In time?

A. Yes; very definitely.

Q. You are able to save how much more time as a rule by truck than you are by rail, let us say, from Fort Wayne, Indiana!

A. How much more by truck than by rail?

Q. Yes; from Fort Wayne,

A. Well, now, I wouldn't be very familiar with Fort Wayne. If I might answer that by referring to Akron, however, I would say seven days.

Q. I am talking about Fort Wayne, now, Mr. Witness. You

have already told be about Akron.

A. I do not have anything from there.

Q. You do not have any shipments from there?

A. No.

Q. Do you have anything from Chicago?

A. No.

Q. You do not get any shipments at all from Chicago?

A. Not in any quantity.

Q. You have understood, have you not, Mr. Witness, that all of these questions have related to interstate less than carload shipments.

A. Yes.

Mr. HARRY YOCKEY. That is all.

Mr. BARKELL Mr. Clardy?

Redirect examination by MraCLARDY:

Q. Witness, as I understand it, you did not have anything to, do with the routing of that particular shipment of jacks, that you referred to; is that correct?

A. Well, we asked for truck service on that particular shipment, because we wanted to get them within two or three days, or seven sooner than that, if possible; but through some error or other, why, our request was ignored.

Q. Now, just a moment ago you were right in the middle of an answer, and you were cut off. You had stauted to say, "If a statement is in order." and you were interrupted. What did you mean by that? What did you have in mind to say?

A. I was just going to add at that particular point that we would not have ordered those jacks to be shipped by rail in the first place.

Q. Why not?

A. Because we asked for truck service.

Q. Why?

A. Because time was very definitely an element, or a factor,

that we were interested in at that particular time.

Q. Well, then, if The Pennsylvania Railroad should get this application granted, and should succeed in saving from 24 to 48 hours times on movements generally into your town, what would be your position with reference to whether or not that would be of any advantage to you in your business; having in mind the existence of the present truck service which you are using at this time?

A. Why, based on our experience of eight or nine days from Akron, that I told you about before, a saving of 24 hours, or even of 48 hours, wouldn't make any difference to us.

Q. I take it, then, that even if the application were granted, you would continue to use the truck service, would you?

A. Yes.

Mr. CLARDY. Thank you.

Mr. BARKELL. Are there any further questions?

Mr. HARRY YOCKEY. That is all.

Mr. BARKELL If there are no further questions, the witness is excused.

(Witness excused.)

Mr. BARKELL. Call your next.

Mr. CLARDY. Mr. Adams.

Mr. Barkell. May I inquire, Mr. Clardy, are your questions going to be the same, or substantially the same, of all of these other witnesses! Your questions to the last few witnesses, whom you have put on, have all been along pretty much the same line. What I have in mind is this: I am just wondering whether or not you gentlemen might be able to stipulate some of this testimony. The direct examination and cross-examination have been almost exactly the same with practically all of these witnesses, as far as we have been able to see.

Mr. CLARDY. Well, in their essentials, your Honor, I think that is very probably true, although there has been some little difference in the particular problems involved at some of the towns.

Mr. HARRY YOCKEY. I will say, if the Board please, as far as we are concerned, we are perfectly willing to stipulate, if the proper kind of stipulation can be entered into, because we did that on our side of the case at Indianapolis before, you will recall.

Mr. BARKELL. Do you not think. Mr. Yockey, that you could stipulate your cross-examination of all of these witnesses?

Mr. HARRY YOCKEY. Well, of course, as I say, your Henor, if the proper sort of stipulation can be made in that sort of

Mr. CLARDY. Your Honor, let me talk with associate

counsel here for just a moment.

Mr. BARKELL. Suppose we take a short recess at this time to give you an opportunity to see what you can arrive at, if anything.

Mr. CLARDY. All right. (A recess was taken.)

Mr. BARKELL Come to order, please, gentlemen. Have you

anything to report, Mr. Clardy?

Mr. Clarry. Your Honor, we have had a little, informal discussion here between counsel during the recess, and it has been suggested by Mr. Yockey that we go ahead at this time with the three additional witnesses whom we have here, and then discuss the matter of a possible stipulation with respect to the testimony of the balance of the witnesses whom we have scheduled and expect to produce here during the succeeding two days that have been assigned for this hearing.

Mr. Barkell. How many witnesses do you have present here

right now?

Mr. Clarry. There are three shipper witnesses, and when we run out of shipper testimony, we have plenty of other testimony to occupy the balance of the time today, and tomorrow also, for that matter.

Mr. BARKELL. Well, now, Mr. Clardy, I am not sure that understand from your statement just what the situation

Mr. CLARDY. The situation is simply this your Honor: that we would like to proceed with the three remaining shipper witnesses whom we have here at this time, and then discuss the matter of a possible stipulation.

Mr. BARKELL. In other words, you are not stipulating as to the

testimony of these three remaining shipper witnesses?

Mr. CLARDY. No.

Mr. Harry Yockey. If the Joint Board please, may I say in fairness to Mr. Clardy, that he and I discussed the matter of a stipulation, and we agreed that it would take a considerable amount of time right now to try to formulate such a stipulation, whereas we can work it out, I think, much more easily after this session is over today. The protestants, as I understand it, still have a large number of other witnesses who are coming in tomorrow, and perhaps the next day also; and I will be glad to work this evening with Mr. Clardy on a stipulation that will cover the testimony of all of those other witnesses, or as many of them as possible. I think by doing it that way, rather than attempting to do it at this time, we will be better able to work out a stipulation that will really be of some value here.

Mr. BARKELL, All right.

Mr. HARRY YOCKEY. That is what Mr. Clardy has in mind. .

Mr. CLARDY. Yes.

Mr. BARKELL. All right, then, Mr. Clardy. Go shead and call your next witness.

Mr. CLARDY Mr. Evans.

Mr. BARKELL. Adams or Evans?

Mr. CLARDY. This is Mr. Evans.

WILLIAM B. Evans was sworn and testified as follows:

Direct examination by Mr. CLARDY:

Q. Witness, identify yourself.

A. William B. Evans.

Q. Where do you live?

A. Petoskey, Michigan.

Q. What is your business?

A. Northern Auto Company; Ford distributors.

By Mr. Eggers:

Q. What town?

A. Petoskey.

By Mr. CLARDY:

Q. Your company, as its name signifies, is engaged in the automobile business, is it?

A. Yes, sin.

Q. Or perhaps I should put that in the past tense, because the war has had some effect on your business, has it not?

A. Yes.

Q. Your business at the present time is confined practically altogether to second-hand cars, is it not?

A. And parts and service.

Q. Is your need for transportation service, therefore, only a fraction of what it was before the outbreak of the war?

A: It is less; yes.

Q. Now, do you ship and receive merchandise—or have you shipped and received merchandise from points outside the state of Michigan?

A. Yes, sir.

Q. Particularly to and from what points?

A. The Firestone Tire & Rubber Company, Akron and Chicago.

Q. In the movement of your shipments in the past, have you had occasion to use the service both of the rail carriers and the motor carriers?

A. No, sir. We specify motor truck.

Q. You specify motor truck service?

A. Yes, sir.

Q. That is for what particular reason?

A. Service.

Q. Well, now, you have used the cryptic word "service." Will you elaborate on that just a little bit, as to what you mean.

A. Well, what I mean by that is this, that we get better service-

we get a quicker service, and we get the material faster.

Q. Now, your company operates at other points besides Petoskey, does it not?

A. Yes.

Q. About how many points in all?

A. Well—

Mr. BARKELL Let us confine it to the points involved in this application, Mr. Clardy,

Mr. CLARDY. That is right, your Honor, but I want to first find out if there are any other points, and how many of them.

A. There are six places.

By Mr. HARRY YOCKEY:

Q. What was that answer?

A. I say, we have six places in northern Michigan,

By Mr. CLARDY:

Q. Where?

A. Cheboygan, Rogers City, Gaylord, Boyne City, Charlevoix,

and Petoskey.

Q. Are the movements to and from those points that you have just named, as far as interstate commerce is concerned, to or from the same points as are involved in movements to and from Petoskey?

. A. (No answer.)

Q. Do you understand the question?

A. Yes, sir; but to a lesser extent.

Q. Do you mean by that, that Petoskey is the biggest place?

A. Yes.

Q. Have you had any occasion to use any rail service in the movement of less than carload shipments from Akron, Ohio?

A. No.

Q. Have you ever used it from Chicago?

A. No.

Q. What motor carrier or motor carriers are serving you in your operations at the present time?

A. Parker Motor Freight.

Q. Has that service been fast, expeditious?

A. Yes, sir.

Q. Has it met all of the needs of your company up to the present time?

A. Yes, sir.

Q. Now, if the railroad company should, in some manner or other, succeed in speeding up its service by from 24 to 48 hours, would that, then, be of any particular advantage to your company!

A. No, sir; I wouldn't say that it would.

Q. Do you ship anything in interstate commerce?

- A. Well, just tires to Akron, Ohio-to and from Akron, that is, and material from Chicago; the Chicago Auto Supply. That is all,
- Q. Now, in your movements to and from Akron, what is the time involved by truck delivery?

A. About two days.

Q. You were present here a while ago, and heard the testimony of Mr. Linder in that connection, did you not?

A. Yes, sir. It would be about the same.

Mr. CLARDY. That is all.

Mr. BARKELL Cross-examine.

Cross-examination by Mr. HARRY YOCKEY:

873 Q. What do you mean by that statement, Mr. Witness?
A. Which?

Q. "About the same."

A. About the same as what Mr. Linder said.

Q. Well-

A. I was sitting back there, and I heard his testimony, and he said about 48 hours; so I say, that is about right. It is about 48 hours from Akron.

Q. What do you mean by "about 48 hours"?

A. I mean by that, that material that is shipped out of Akron, such as tires, and so forth, would reach us in about 48 hours—or in about two days.

Q. Is that what you meant by your last answer?

A. How?

Q. Is that what you meant by your answer to the last question that Mr. Clardy asked you?

A. Yes.

Q. Well, now then, are you using The Pennsylvania Railroad at the present time for the movement of any interstate shipments?

A. No.

Q. That is, less than carload shipments.

A. No.

Q. How long has it been since you have used The Pennsylvania. Railroad to move an interstate less-than-carload shipment?

A. Oh, I don't remember when we did.

Q. Well, now, can you just give the Joint Board some idea as to whether it was one year—

A. No.

Q. Or two years-

A. No.

Q. Or five years?

A. I don't remember that we have had anything over The Pennsylvania Railroad.

Q. You do not recall anything at all?

A. Right

Q. And you are not sending anything that way now ?.

A. No.

Q. So that even if the service were speeded up, you would not use it at all; is that right?

A. No. .

Q. Do you mean, that is not right-

A. I mean, that is fight.

Q. You would not use it anyhow?

A. No.

Mr. HARRY YOCKEY. That is all.

Mr. LINDSTRAND. I have just one question, if the Board, please.

By Mr. LINDSTRAND:

Q. Mr. Witness, of the six points that you named here a moment ago, Petoskey is the only place which is served by The Pennsylvania Railroad, is it not?

875 A. Yes.

Mr. LINDSTRAND. That is all.

Mr. BARKELL. Are there any further questions of the witness!

Mr. CLARDY. Nothing.

Mr. BARKELL. That is all, Mr. Witness. Thank you.

The WITNESS. Thank you.

(Witness excused.)

Mr. BARKELL. Call your next.

Mr. CLARDY. Mr. Smith.

OTIS F. SMITH was sworn and testified as follows:

Direct examination by Mr. CLARDY:

Q. State your name, Witness.

A. Otis F. Smith.

Q. Where do you live?

A. Mackinaw City, Michigan.

Q. What is your business!

A. Hardware and dime store.

Mr. BARKELL. We could not hear,

By Mr. EGGERS:

'Q. How is that again?

A. Hardware and dime store—or rather, hardware and dollar store, I guess I had better describe it as.

By Mr. HARRY YOCKEY:

Q. Dime store!

A. Dime and dollar store.,

876 By Mr. CLARDY:

Q. Does your business require the use of any transportation service from or to points outside the state of Michigan!

A. Well, yes, sir; it does. We receive goods out of Cleveland and Toledo, Ohio, and Chicago, Illinois, and from points further south, of course, also.

Q. Do you use both rail and truck service in the operation of your business?

A. Yes.

- Q. Do your movements consist primarily and principally of less than truckload quantities?
 - A. It is all less than carload.
 - Q. All less than carload.
 - A. Yes.
 - Q. About how frequent an in-bound movement do you have?

A. Everyday.

Q. In the operation of your business, what carrier, or what carriers, do you normally use!

A. Mulvena and Parker Motor Freight.

Q. Referring to your movements from Chicago first; am I correct that Parker Motor Freight handles those!

A. Yes.

- Q. And in the case of movements from points to the east of Chicago, normally Mulvena handles those; is that correct?
 - A. The Toledo shipments come over the rail.

877

By Mr. EGGERS:

Q. How is that again?

A. The shipments from Toledo come rail.

By Mr. CLARDY:

Q. What railroad?

A. M. C.

By Mr. EGGERS:

Q. What?

A. M. C.—Michigan Central. That is, the New York Central Railroad.

By Mr. CLARDY:

Q. Yes.

A. And the Cleveland shipments come Mulvena.

Q. Very well. Now, Witness, has the service that you have been receiving from those two truck lines been dequate and satisfactory to meet your needs?

A. It has been very satisfactory; yes.

Q. In the case of movements from Chicago, for example, about what time is normally consumed in getting those shipments in?

A Oh, about four days.

Q. Four days?

A. Or five days.

Mr. HARRY YOCKEY. From where?

A. From Chicago, you said, didn't you?

By Mr. CLARDY:

Q. From Chicago.

A. Yes. And the same—or about the same, from Cleveland. It takes about six days from Cleveland.

Q. Are you speaking now of rail, or truck, or both?

A. Truck.

Q. By truck.

878 A. Yes.

Q. Have you ever had occasion to move anything by rail from either of those points?

A. Yes.

Q. How long did it take?

A. On the average, about 10 days.

Q. 10 days would be the average?

A. Yes, sir.

Q. Have you ever shipped anything the other way?

A. The other way?

Q. Yes; to those points?

A. No, sir; I never have. You see, in our business we don't do any shipping out. All that we do is to receive. We have got three railroads there, and three truck lines also.

Q. Then, if it takes 10 days to get a shipment in by rail at the present time, if they should speed up their service as much as 24 to 48 hours, would that be of any material advantage to you?

A. No, sir; it wouldn't be, because they would still be away behind the eight ball, even then, as far as service is concerned.

Q. If they speeded the service up the maximum of 48 hours, which they claim, do I understand that you would still—

A. Use the trucks.

Q. You would continue to use the trucks?

A. I would still use the truck service; yes, sir, because, as I say, they would still be behind the eight ball, as far as service is concerned; as far as we are concerned up there.

Q. By the way, Witness, how big a town is Mackinaw City?

A. About 1,000.

Q. How much?

A. About 1,000.

Q. Its principal business is as a resort town, is it not?

A. Yes.

Q. And as one of the termini of the ferry?

A. Yes. That is all resort territory up in there.

Q. Has the outbreak of the war had any effect upon your business up there so far this year?

A. On the hardware business?

Q. Well, referring to that.

A. I should rather say that it has; yes, sir. I could use a whole lot of saws up there, for example, right now.

Q. At the present time about what percentage is your business

for this year running below your business last year, say?

A. About 50.

Q. About 50 percent?

A. Yes, sir.

Q. Has that situation had a corresponding effect upon your need for transportation?

A. Oh, yes; a whole lot.

Q. If the application here should be granted, and the applicant were permitted to inaugurate or start this operation, am I correct in understanding that you still would not make any more use of the rail service than you are making at the present time?

A. Yes, sir; that is correct; figuring the service that we are getting right now. The truck service has been satisfactory, and just cutting down the time 48 hours would be no advantage to us in our particular situation up there where we are; because the way it is right at the present time, the trucking service can beat the railroad service by more than 48 hours from Chicago, or Cleveland, or Toledo; either one.

Mr. CLARDY. That is all.

Mr. BARKELL. Cross-examine.

Cross-examination by Mr. HARRY YOCKEY: July

Q. Mr. Witness, did I correctly understand you to say that in the movement of your interstate less than carload shipments you are using both rail and truck service at the present time?

A. Yes.

Q. Do you use The Pennsylvania Railroad?

A. We don't use The Pennsylvania Railroad; no, sir; because the only stuff that we get by rail comes out of Toledo, Ohio.

Q. How do you get that?

A. M. C.

Q. How?

A. Michigan Central.

Q. How long has it been since you have used The Pennsylvania Railroad, on an incoming shipment?

A. Oh, well, about—well, we do get some Pennsylvania Railroad freight from down below those points that I named, down in Virginia, and stuff like that.

Mr. Eggers. Will you read that last answer, please, Mr. Re-

(Answer read.)

By Mr. HARRY YOCKEY:

Q. Is that less than carload freight?

A. Yes.

Q. All less than carload?

A. Yes.

Q. How frequently do you get those shipments?

A. Well, ordinarily we get in about three of them in the spring. I would say, and that takes care of us during the entire period of the year.

Q. How long does it take for those shipments to get to you?

A. About three weeks.

Q. About three weeks?

A. Yes.

Q. Well, now, as to the service which you are getting by truck at this particular time—I understand you to say that you get some freight from Toledo by truck.

A By rail.

Q. And that takes from 4 to 6 days for those shipments to get to you at Mackinaw City; is that right?

A. 10 days from Toledo by rail.

Q. I am talking about

A. By truck?

Q. That is, by the Michigan Central Railroad.

A. Yes.

Q. But I am talking about the shipments that you have coming in by truck from Toledo.

A. Oh.

Q. How long does that take?

A. Four to six days.

Q. Four to six days?

A. Yes

Q. From each of the points you named?

A. Yes.

Q. Well, then, if that service were to be speeded up from 24 to 48 hours, that would be of benefit to you in your business, would it not?

A. I couldn't see why it would.

Q. Well, would it not benefit you-

A. It wouldn't benefit us one bit, as far as transportation service is concerned; it wouldn't help us one single bit.

Q. In other words, then, you would not be interested in the speeding up of this service from 24 to 48 hours by truck or rail;

is that correct?

A. Why, yes, sir; certainly I would be be interested, but it is already speeded up by truck.

Q. Well, now, let me understand you correctly, Mr. Witness. Are you, or are you not, interested in a speeding up of your rail service by from 24 to 48 hours, if it could be done?

A. No.

Q. You would not be?

A. No, sir; I wouldn't be, because I am very well satisfied with the truck service that I am getting, as it is, right now.

Q. And you would not want it improved in any way, then, either

by rail or by truck?

A. No, sir; because, as I have told you several times, now, I am very well satisfied with the service that I am getting by truck right at this present time.

Q. That is your abswer, isut?

A. That is what it is; yes, sir.

Mr. HARRY YOCKEY. That is all.

Mr. BARKELL. Is that all?

Mr. CLARDY. I should have asked him just one other question, your Honor.

Mr. BARKELL. All right.

Mr. Clardy. Just a moment, please, Mr. Smith. I just want to ask you one more question.

Mr. HARRY YOCKEY, Well, now-

By Mr. CLARDY:

Q. Witness, you are familiar with the other shippers in your city, are you not?

Mr. HARRY YOCKEY. Just a moment.

Mr. BARKELL. I thought the witness was excused.

Mr. CLARDY. I have another question that I would like to ask him, your Honor, that I have overlooked.

Mr. BARKELL. Ask the next witness.

Mr. CLARDY. No; I want to ask it of this witness, because he is the big shipper in his town, and I just want to develop that fact.

Mr. HARRY Yockey. Let him get back to the stand, then.

Mr. BARKELL. Yes.

Mr. Eggers. I suppose technically he is on the witness stand until he gets out of sight of the lawyers,

Mr. HARRY YOCKEY. Well, we will not be technical about it.

Mr. Clardy. This did not occur to me until after he had left the witness stand.

Mr. BARKELL All right.

Redirect examination by Mr. CLARDY.:

itness, you are familiar with the other shippers in your town of Mackinaw City, are you not?

A. No.

Q. Pardon me!

A. There aren't any shippers up there. We are all receivers of freight up in our town.

Q. I should have said, the other receivers.

A. Yes, sir.

Q. What would you say, as to how the volume of shipments which you receive, compares with the volume of shipments received by any of the other receivers of freight up there—

Mr. HARRY YOCKEY. Just a moment.

By Mr. CLARDY:

Q. In your community?

Mr. HARRY YOCKEY, I object.

A. Well-

Mr. HARRY YOCKEY, Wait.

Mr. BARKELL Just a moment.

Mr. HARRY YOCKEY. I object to the question, if the Board please. This witness is not qualified to be testifying about the business that the other receivers of freight up there do.

Mr. BARKELL. Objection sustained.

Mr. CLARDY. Oh, your Honor-

Mr. Barkell. No; this witness may speak for himself, but I do not know how he is going to be able to speak for the other shippers—or rather, the other receivers of freight up there, unless you are able to qualify him further than you have up to the present time. As yet you have not qualified him at all to testify along that line.

Mr. CLARDY. All right.

By Mr. CLARDY:

Q. Witness, about what volume of in-bound shipments do you receive on the average over the period of a week, a month, or a year? Supposing you give it to us, if you can, over the period of one year.

A. Well, now, I don't know if I get you there. Just what do you mean by that; in tonnage, the tonnage that I receive, or

what?

Q. Yes; with respect to tonnage.

A. What percent, did you say-

Q. No; not what percent, Witness, but just what your total tonnage is over the period of a year.

A. Oh, the total?

Q. Yes.

A. Why, I would say, probably 12 carloads per year.

Q. How much!

A. 12 carloads.

By Mr. HARRY YOCKEY:

Q. Per year?

A. Yes, sir; in a normal year.

By Mr. EGGERS:

Q. What was that last?

A. In a normal year.

By Mr. BARKELL:

Q. What do you consider a carload?

A. Oh, that would be around 30,000 to 40,000 pounds to the car.

By Mr. CLARDY:

Q. You said, 12 carloads?

A. Yes.

Q. With about how much to the car!

A. 40,000 pounds.

Q. Now, Witness, is there any other shipper in your com-

887 . A. Not shipper; you mean receiver.

Q. Thank you. Is there any other receiver of freight in your community that receives that much merchandise over the same period of time—

Mr. HARRY YOCKEY. Just'a moment,

By Mr. CLARDY:

Q. To your knowledge?

Mr. HARRY YOCKEY. Now, just a moment. Counsel is getting into a comparison, now, and I object to it; the same objection.

Mr. BARKELL. How would he know?

Mr. CLARDY. I have merely asked him if to his knowledge there is any such. I certainly am entitled to find out if he knows whether

or not there is any such.

Mr. Harry Yockey. This witness, if the Board please, is certainly not qualified, as far as this record is concerned up to the present moment to state how many shipments of freight other receivers of freight in his town get, or where they come from, or how frequently they get them, or anything of that sort. This witness is not qualified to testify to anything of that kind.

Mr. CLARDY. The witness may certainly answer, if he knows.

Mr. BARKELL. What is the question again?

By Mr. CLARDY:

Q. My question is simply this, your Monor: do you know of any other shipper—

. Mr. BARKELL. Receiver, do you mean !

By Mr. CLARDY:

Q. Any receiver of freight in your community that receives that amount of merchandise, that the witness has a just stated, in the period of one year.

Mr. BARKELL, Interstate.,

Mr. CLARDY. Interstate or intrastate.

Mr. BARKELL. Oh, no.

Mr. CLARDY. Then I will qualify it later.

Mr. BARKELL. We are not interested in the intrastate. Confine it to the interstate.

Mr. CLARDY. I appreciate that, your Honor, but I first want to get from him the total tonnage, and then I will ask him further with respect to that.

Mr. BARKELL. We are only interested, Mr. Clardy, in the inter-

state part of it.

Mr. CLARDY. All right.

Mr. BARKELL. You may ask him that question.

Mr. CLARDY. I will ask him that.

By Mr. CLARDY:

Q. Is there any other shipper of freight—or rather, is there any other receiver of freight in your town, Witness, that receives as much freight as you have indicated you receive?

Mr. Barkell. Well, now, just a moment, Mr. Clardy: You are asking him a different question, now. You are asking him

if he knows of any other receiver in his town.

Mr. CLARDY. You are right.

By Mr. CLARDY:

Q. Is there any other receiver of freight that you know of, Witness, in your town, that receives that much merchandise per year in interstate commerce?

A. (Shaking head "No.")

M. BARKELL Speak up.

Mr. EGGERS. That does not go into the record, when you move your head.

By Mr. CLARDY;

Q. Is your answer "No"?

A. "No."

Q. Do you know of any other shipper—or any other receiver of freight in your community who receives as much as a quarter of that amount in interstate commerce—

Mr. HARRY Yockey. Just a moment.

By Mr. CLARDY:

Q. During the period of a year?

Mr. HARRY YOCKEY. Now, just a moment. I want to renew my objection, if the Joint Board please. We are getting into something now concerning which this witness has not been qualified to testify at all. This testimony can have no probative value whatsoever. This man is not qualified to testify, and go into a negative proposition here, that counsel is now trying to get him to testify to. I submit that this line of examination is highly improper. This record here is just being cluttered up with something that is of utterly no probative value.

Mr. CLARDY. May I be heard, your Honor?

Mr. BARKELL. Yes.

Mr. CLARDY. This man lives in a town with a population of about 1,000 people. The Chairman of this Joint Board is well enough acquainted with Mackinaw City, or any other similar community, to know that any merchant in a community of that sort will know all about the amount of business that all or any of the rest of the merchants are doing, and what it consists of. The town is small enough, and the business is handled in such a way that he is qualified to testify, and I thought that I had qualified him as an expert on the subject. Counsel has objected, and I am now asking the question in this particular form: I would like to ask the witness, and I think he is qualified to answer, whether or not he does not know of his own knowledge, that there is no other shipper-or receiver of freight in his town of Mackinaw City, who receives even a fractional part of the amount of tonnage that he receives over the period of a year; and I think I have qualified him so that he can answer that question. That is the gestion that I would like to ask, and I have not understood your Honor, up to this point, to say that I cannot ask it. So I will ask that question, and see what happens.

Mr. HARRY YOCKEY, Well, now-

Mr. CLARDY. Just a moment.

Mr. HARRY YOCKEY. Are you through?

Mr. CLARDY. No.

Mr. HARRY YOCKEY. Well, I want to again call the Board's attention to the fact that we are just simply getting into a negative proposition here. This man is not qualified to testify 891 along this line.

Mr. CLARDY. I am going to ask it the other way, now.

Mr. HARRY YOCKEY. It does not make any difference how you ask it. We are just wasting time here.

Mr. BARKELL. I do not think it is material, myself.

Mr. CLARDY. Oh, I think it is, your Honor—to show that the principal shipper in this town is taking a certain position with regard to the need for any additional transportation service. I think that is very important.

Mr. BARKELL. All right, you may go ahead, and I will examine

the witness later on myself, if necessary, and clear it up.

By Mr. CLARDY:

Q. Witness, how many other shippers or receivers of freight are there in your town, who are receiving freight—

A., I would say-

Mr. Eggers. Just a moment.

Mr. BARKELL. Finish the question.

Mr. Eggers. Was the question finished?

Mr. CLARDY. Not quite.

Mr. BARKELL. Finish the question.

By Mr. CLARDY:

Q. In interstate commerce, if you know?

A. Oh, I would say, 15.

Q. A total of about 15?

A. Yes.

Q. Are you rather well acquainted with the size or volume of business that each of those 15 receivers handles!.

A. Why, fairly, I would say, yes, sir. That is, I wouldn't say that I know everything about their business; but from what I can see is all. I have an idea, however.

Q. Are there-

Mr. HARRY YOCKEY. Well, now, just a moment. I object to this. This is not qualifying the witness one iota.

Mr. Eggers. Let him continue on for a moment until we see what the next question is.

Mr. BARKELL Yes.

By Mr. CLARDY:

Q. My question is this: are there any other businesses in your town that are receiving the same amount of merchandise that your business is receiving?

A. (Shaking head "No.")

Mr. Eggers. Speak out.

Mr. BARKELL. Answer the question.

By Mr. CLARDY:

Q. Your answer is "No"; is it?

A. "No"

Q. Is there any other receiver of merchandise in your town who is getting in or receiving commodities of the weight and bulk that yours run?

Mr. H. RY YOCKEY. Just a moment.

A. No, sir,

Mr. HARRY YOCKEY. Just a moment, please, Mr. Witness. I move to strike out the answer, and I renew my objection to the question. This man has not yet been qualified, if the

Board please, to testify regarding the other shippers or receivers of freight in Mackinaw City. Mr. Clardy is just consuming an awful lot of time here, and building up a big record, with matter that cannot possibly have any probative value, and he is going to make us take a lot of time cross-examining this witness to demonstrate most definitely that this man is not qualified to testify along this line. Now, I say again, if the Joint Board and the Commission please, why take time with this sort of thing, when the man has not been qualified?

Mr. CLARDY. I have not finished qualifying him yet.

Mr. BARKELL. Will you go back and read that last question, please, Mr. Reporter?

(Question read.)

Mr. CLARDY. I am just merely trying to find out now what knowledge the witness has as to the shipping requirements of the others in his town, before I ask him the prime question.

Mr. BARKELL. Well, to save time, if the witness knows, let him

answer the question.

Mr. CLARDY. Surely.

By Mr. CLARDY:

Q. Do you have the question in mind, Witness?

A. Will you give it to me again?

Mr. CLARDY. Read it again, please.

(Question read.)

A. I would say : no.

894 Mr. EGGERS. What is the answer?

By Mr. CLARDY:

Q. "No"?

A. "No.".

Q. All right. Now, with respect to the other shippers or receivers of freight in your town, are any of them receiving in interstate commerce as much as a quarter of the amount that you are presently receiving?

Mr. HARRY YOCKEY. Objection.

A. No.

Mr. HARRY YOCKEY. Just a moment, please, Witness, when I am trying to make an objection.

Mr. Eggers. Just a moment.

Mr. HARRY YOCKEY. I move to strike out the answer, and I want to renew my objection.

Mr. BARKELL, Well-

Mr. HARRY YOCKEY. On the same grounds that I have stated before.

Mr. BARKELL. I still say that if the witness knows, he may answer the question.

Mr. CLARDY. He may not know. I do not know.

By Mr. CLARDY:

Q. What is the answer, please?

Mr. BARKELL. You may answer the question, if you can.

By Mr. CLARDY:

Q. Can you answer the question, Witness !

A. (No answer.)

Mr. CLARDY. Read it back to him, please.

895 (Question read.)

A. I don't know.

By Mr. EGGERS:

Q. What is the answer?

A. I say, I don't know. I wouldn't be able to tell you-

Q: All right.

A. How much the other fellows are getting.

Mr. BARKELL. All right.

Mr. Eggers. I think that puts an end to it right there. . .

Mr. HARRY YOCKEY. I thought we would get around to that sooner or later. Now, in view of that answer, if the Board please,. I move to strike out all of the testimony of the witness along this line.

Mr. CLARDY. Oh, you cannot strike it out.

Mr. HARRY YOCKEY. As to what the other shippers or receivers of freight in his town receive, and so forth, I move to strike it all out—

Mr. CLARDY. Oh, no.

Mr. HARRY YOCKEY. Because he is not qualified.

Mr. CLARDY. It has been perfectly competent up to this point. It was put in for the purpose of qualifying the witness. But since he has answered the way he has, I am through.

The WITNESS. Are you all through with me?

Mr. CLARDY. That is all.

Mr. HARRY YOCKEY. Just a moment. May I have a ruling on my motion to strike, please.

896 The Witness. Are you done?

Mr. CLARDY. Just a moment, Witness.

Mr. HARRY YOCKEY. Just a moment. o

Mr. CLARDY. I do not believe he has anything else to ask you, Witness, but just a moment.

Mr. HARRY YOCKEY. I do not know yet. I am waiting for the

Joint Board to rule on my motion.

Mr. BARKELL. We will let the record speak for itself, Mr. Yockey. I think that will take care of the matter.

Mr. HARRY YOCKEY. All right.

Mr. BARKELL. Are there any further questions of the witness,

Mr. HARRY YOCKEY. That is all.

Mr. BARKELL If there are no further questions, the witness is excused.

(Witness excused.)

Mr. BARKELL. Call your next.

Mr. CLARDY. Mr. Carlton.

Mr. BARKELL, By the way, Mr. Clardy; do I understand that this is your last shipper witness?

Mr. CLARDY. This is the last shipper witness we have for today;

Direct examination by Mr. CLARDY:

yes, your Honor.

897

Mr. BARKELL. All right.

GEORGE CARLTON was sworn and testified as follows:

Q. What is your name, Witness?

A. George Carlton.

Q. Where do you live!

A. Mackinaw City, Michigan.
Q. What is the nature of your business?

A. Meat and grocery business.

Q. You are one of the other 14 merchants in Mackinaw City, mentioned by the last witness.

A. Yes.

Q. Does your company—or do you in your business, rather, require transportation service in connection with commodities moving from outside of the state?

A. Yes.

Q. What do you receive?

A. Mostly meat.

Q. Where does it come from !-

A. Chicago.

Q. Is that about the only in-bound commodity that you receive from points outside the state of Michigan?

A. Yes; I think that is about all.

Q. Do you have occasion to ship anything out, other than return movements of meat that has spoiled, or has been rejected?

A. No.

Q. Very well. Now, taking your in-bound movement: would you tell us how that is being handled at the present time?

A. Well, it comes to Petoskey, the Swift & Company meat comes to Petoskey by rail, and then it is distributed out of Petoskey by truck.

Mr. Eccess. Just a moment.

A. (Continuing), By Parker Motor Freight truck.

Mr. EGGERS. Just a moment, Mr. Witness.

By Mr. EGGERS:

Q What kind of meat is that; smoked or fresh?

A. Fresh meat.

Q. Fresh meat !

A. And smoked meat; both.

Q. Both fresh and smoked.
A. Yes, sir. It comes in in refrigerator cars to Petoskey.

Q. Does it all come in refrigerator cars?

A. Yes.

By Mr. CLARDY:

Q. Those shipments are what are normally termed as pool car rail shipments, are they not?

A. Yes.

Q. To Petoskey?

A. Yes, sir.

Q. And then they are fanned out by truck from there?

A. Yes.

Q. Is that the way they are handled?

A. Yes, sir.

Mr. EGGERS. All right

899 By Mr. CLARDY:

Q. Now, Witness, how long has the service been rendered you in that fashion?

A. Oh, for five or six years, I would say.

Q. Is that traffic handled on the routing of the shipper?

A. Yes.

Q. Which, I believe you said, is Swift & Company.

A. Yes.

Q. Has there been any indication to you by Swift & Company recently that they intend to change that method of handling?

A. Well, not just recently there hasn't been anything of that sort; no, sir; but about two years ago, I would say, they were talking about putting on their own trucks.

Q. Out of where?

A. Why, that would have been out of Chicago, I presume, although I don't know. I couldn't say right now where they would have been out of.

Mr. Eccens. Just a moment. Will you read that last answer,

please, Mr. Reporter.

(Answer read.)

Mr. Eggers. Of the record a moment.

Mr. CLARDY. Surely.

(Discussion outside the record).

Mr. BARKELL, Now back on the record.

Mr. Clardy. Where did we leave off, please, Mr. Reporter? (The record was read.)

900 Mr. BARKELL. Mr. Clardy, I do not believe that we are interested in an operation two years old.

Mr. CLARDY. No, your Honor. I do not intend to pursue that.

By Mr. CLARDY:

Q. Now, Witness, with respect to the service that Parker Motor Freight has been rendering you, and is rendering you at the present time: has that service been perfectly adequate and satisfactory to meet your needs?

· A. Yes, sir; it has been very satisfactory.

Q. And if The Pennsylvania Railroad, the prime mover in this case, should have The Willett Company put on some kind of an operation that would handle this particular commodity of yours, so far as you are concerned, would that be of any present benefit to you in your business, as you have previously explained it in your testimony here?

A. Why, yes, sir; it would, because in the handling of fresh meat, of course, the faster you get it there, the better it is for you.

Q. All right. Now, has the company that is shipping this meat to you at the present time, Swift & Company, indicated to you that it would reroute the meat by way of The Pennsylvania Railroad, and have them handle the meat in some particular fashion that would speed it up?

A. (No answer.)

Q. Do you understand the question?

901 A. Yes.

Mr. BARKELL. You may answer that question yes or no. A. No; it has not.

By Mr. CLARDY:

Q. Has the applicant here, or anybody connected either with the applicant, The Willett Company, or The Pennsylvania Railroad, made any suggestion to you with regard to how they propose to speed up the service?

A. No, sir; they haven't.

Q. By the way, Witness, what time is normally consumed in this movement of your meat, the way it is being handled at the. present time from Chicago?

A. About 48 hours.

· Q. From Chicago?

A. Yes, sir.

- Q. Do you know about how much time is consumed by the truck line in handling the meat, after it reaches the points where the bulk is broken?
 - A. Well, that will vary, of course.

Q. Generally speaking.

A. Well, at times they will unload the meat when it gets in there in the afternoon, and if and when they do that, why, quite often we will get it within, say, three or four hours after the car has gotten into Petoskey; and then at other times they don't get it out until the next morning.

Q. Do the trains sometimes get in there during the day, so that an early delivery may be effected, and at other times

they get in there during the night?

A. Well, no, sir. I think that train gets in there—I think it has been getting in there in the afternoon. That train has been getting into Petoskey about three o'clock in the afternoon.

Q. That meat comes in on a wayfreight train, does it?

A. Yes, sir; that is correct. I believe that there is a refrigerator car that is pulled in on the wayfreight train, that gets in there in the afternoon.

Q. Which railroad is that?

A. That is The Pennsylvania Railroad. I am just not exactly positive about that, now, however; but I am quite sure that is what they told me.

Q. How frequently do you get this service?

A. Twice a week.

Q. That is, on regular, scheduled days, I take it?

A. Well, the way we order the meat is this: the order is put in on Friday, and we get it on Tuesday; or the order is put in on a Tuesday, and we get it on Friday.

Q. As far as you know, then, it is not being handled over the railroad on a regular freight train, is it?

A. I don't think so.

Q. But rather, on a wayfreight train.

A. I think it is a wayfreight train; yes, sir. But as I said be-

fore, I am not just positive about that.

903 Q.I. see. Now, have you ever received anything else, either from Chicago, or any other point outside of the state, that was handled by rail?

A. Well, nothing that I can recall of right at the moment, nosir; except maybe in some particular instance, but very seldom.

Q. And the same thing as to your out-state shipments?

A. How is that?

Q. I mean to say, your out-bound shipments.

A. Very seldom.

Q. There have been none of those?

A. I have shipped but very little.

Mr. CLARDY. That is all.

Mr. BARRELL. Cross-examine.

Mr. HARRY YOCKEY. No questions.

Mr. BARKELL. Just a moment, please, Mr. Witness. I want to ask you one question.

By Mr. BARKELL:

Q. How large is this volume that you get in?

A. My volume of business?

Q. Yes.

A. Well-

Q. I mean in total.

A. (No answer.)

Q. Approximately will do.

A. Per year?

Q. Yes.

A. The total volume that I handle per year?

Q. Yes, sir.

A. Oh, I would say, somewhere around 30,000 or 40,000 pounds. I would have to look it up before I could answer that.

Q. Somewhere between 30,000 and 40,000 pounds?

A. Yes, sir; I should say somewhere around in there; or even possibly as high as 50,000 pounds, maybe. I would have to look it up before I could tell you definitely.

Mr. BARKELL. All right:

Mr. CLARDY. Just one more question.

By Mr. CLARDY:

Q. Your meat comes in to you at Petoskey in less than truck-load quantities, does it not, Witness?

A. Well, during the summertime, you understand, why, it will run up into quite a volume, and then in the wintertime there are times when there will be but very little. There are times during

the winter when the shipments that I get in may only run three or four hundred pounds; and then again, as I say, in the summer-time, they will run anywhere from 2,000 pounds to 5,000 pounds.

Mr. BARKELL. If there are no further questions, the witness is

excused.

(Witness excused.)

Mr. BARKELL. Now, Mr. Clardy, are those all of your shipper witnesses for today?

Mr. Clardy. That is correct. We have been attempting to 2005 concentrate particularly on those from the north, and we have only run in two or three from the south, trying to clear up that part of Mr. Parker's testimony. Now, may we be off the record a moment, your Honor, while we briefly discuss the proposed stipulation?

Mr. BARKELL. All right, Off the record a moment, Mr. Reporter.

(Discussion outside the record.)

Mr. BARKELL. Now back on the record. You may call your witness, Mr. Clardy.

Mr. CLARDY. Mr. Darling.

DALLAS L. DARLING was sworn and testified as follows:

Direct examination by Mr. CLARDY:

Q. Your name, Witness.

A. Dallas L. Darling.

Q. Where do you live?

A. Grand Rapids, Michigan.

Q. What is the nature of your business?

A. Trucking business.

Q. Under what name do you operate?

A. Dallas L. Darling Truck Line.

Q. Your company at the present time is operating in interstate commerce, is it not?

A. Yes.

906 Q. What is the clocket number assigned to your authority?

A. Offhand, I don't know.

Q. You can obtain that for us, can you not?

A. Yes.

Mr. ANDERSON. I have it right here.

The Witness. 46280. I believe it is or I believe that is one of them, anyway.

Mr. Anderson. MC 46280, MC 46380, and MC 46380 Sub. 1.

Mr. HARRY YOCKEY. 46280 and 46380?

Mr. Anderson. Yes.

Mr. CLARDY. I think it is MC 46280 and MC 46280 Sub. 1.

The WITNESS. Yes.

Mr. CLARDY. I see a notation here of MC 46380, but I think that is an error.

The WITNESS. I think so.

Mr, CLARDY. At any rate-

The Wirness. At any rate, I have two docket numbers.

Mr. Anderson. That is right, and one of them is a sub number.

Mr. CLARDY. You do have two docket numbers.

The WITNESS, Yes.

Mr. CLARLY. Mr. Reporter, protestants' exhibit 19 for identification, please.

(Protestants' exhibit No. 19, Witness Darling, marked for

identification.)

907 By Mr. CLARDY:

Q. Now, Witness, I show you this map that has been marked by the Reporter for purposes of identification as protestants' exhibit No. 19, and I will ask you if that map correctly portrays the rights which you hold from the Interstate Commerce Commission at the present time?

A. Yes.

Q. In general, your route runs north out of Grand Rapids, over the route involved in this application, as far as Cadillac, Michigan, does it not?

A. Between Grand Rapids and Cadillac, the route that is in-

volved in this application parallels our route; yes, sir.

Q. And then north of Cadillac your operations extend west-

· A. Grand Rapids.

Q. Or rather, I mean to say, north of Grand Rapids, your operations extend westward into Muskegon, do they not?

A. Yes.

Q. Coming down from a point north of Grand Rapids.

A. Yes.

Q. Do you also serve Traverse City?

A. Yes, sir.

- Q. Operating over highways that—well, do they parallel the line of railroad, or not?
- A. No, sir; they do not. We serve Traverse City via a county road, and 37.
 - Q. In addition to that, you have a line running from Traverse City southward, have you not?

A. Yes.

- Q. Touching Manistee and Ludington on the south.
- A. Yes.

Q. Now, Witness, your company has been operating over those routes for approximately how many years in interstate commerce?

A. We have been operating over a portion of that route over

20 years, and over the balance about five years.

Q. At the present time are you handling merchandise destined for points north of Cadillac, that has originated at points outside the state of Michigan by a transfer at Grand Rapids?

A. No. sir; not at Grand Rapids. Our transfer is at Cadillac.

Q. At Cadillac!

A. Yes, sir.

Q. Do you serve intermediate points between Cadillac and Grand Rapids?

A. We serve every one of the intermediate points on route

131; yes, sir.

Q. Now, with respect particularly to that segment of the route, would you tell us what towns you serve along that route, and as you mention them, I wish you would give us for the record some indication of the size of those communities.

A: I will start at Grand Rapids.

Q. Yes.

A. The first town north of Grand Rapids on route 131, which we serve, is Rockford, Michigan, a community with a population of about 3,000 or less; which is also served by—do you also want me to give the names of the other carriers that serve these points?

Q. Yes; if you will.

A. Which is also served by The Pennsylvania Railroad, Associated Truck Lines, Interstate Motor Freight System, and Wolverine Motor Express. Proceeding northward, the next town that we serve is Cedar Springs, a little community with a population of about 1,500, which is also served by the same carriers that I just mentioned, motor carriers, and also The Pennsylvania Railroad. Then we have the small towns of Sand Lake, Pierson, and Howard City.

By Mr. HARRY YOCKEY:

Q. Just a little bit slower, please, Mr. Darling. We are trying to make a note of these points as you go along.

A. I'm sorry.

Q. Sand Lake, and-what?

A. Pierson, and Howard City.

By Mr. CLARDY:

Q. Now, Witness, before you pass on, you say that those points are small.

A. Yes.

Q. Just what do you mean by that term, as applied to those par-

ticular towns?

A. Well, according to this Michigan map that I have before me here, referring to the population figures, they would be considered as small towns.

By Mr. EGGERS:

Q. Well, that is still a little bit vague. Do you know of your own knowledge how big they are?

A. About 300.

Q. Or how small?

A. 300.

Q. All right.

A: That is, Sand Lake, and Pierson. Next is Howard City.

Q. Yes?

A. About 800.

Mr. EGGERS. All right.

By Mr. CLARDY:

Q. The next town is what?

A. The next town that we serve is Morley, with a population of about 600 people. I might just add at this point that there is no manufacturing—there are no manufacturing industries in any of these towns that I am naming. The next point is Stanwood, with a population of about 300 people. Then comes Big Rapids, which is a manufacturing city, with a population of about 2,500.

Q. All right. Now, then, Witness, proceeding north of Big

Rapids, would you tell us the towns that you serve?

A. The next town is Reed City.

Q. By the way, how about Paris, which appears in between Big Rapids and Reed City?

911 A. That is a fish hatchery.

Q. There is nothing of any importance at that point at all, then, I take it, other than the fish hatchery?

A. No.

Q. It/is just a crossroads.

A. It is just a fish hatchery. We serve that point with frozen fish. It is a tonnage point for us.

Q. I mean by that, there is no town there.

A. No.

Q. Properly speaking.

A. No.

Q. All right. Now, you say Reed City is next.

A. Yes, sir. That is a railroad junction for two railroads, and it has a population of about 2,500. It is a manufacturing town, with an oil industry and a lumber mill. Reed City is also served

by the Doyle Freight Line, Interstate Motor Freight System, and the two railroads above referred to.

Q. All right. Now, will you continue on north of there.

A. Then next there is a small village, Ashton, with a population of about 100; LeRoy, with a population of approximately 300; Tustin, with a population of about 200; and then the city of Cadillac.

Q. Now, Witness, there is a town named in applicant's exhibit No. 7, although I do not know whether it is spelled correctly there or not, and I do not see it on the map here. In their exhibit it is shown as Orono. Do you know anything about

A. I never heard of it.

. that?

Q. Is there such a place-

Mr. HARRY YOCKEY, Just a moment.

Mr. ANDERSON. Here it is.

Mr. HARRY YOCKEY. He says he does not know.

The WITNESS. I never heard of it. Is there such a place?

Mr. EGGERS. Just a moment. Let us restrict ourselves to asking questions of the witness, and not having the witness ask them.

By Mr. CLARDY:

Q. Witness, you have been up and down that road there a great many times, have you not?

A. Yes.

Q. I have just been informed that there is such a place. Do you recall ever having seen it in passing up and down the road there?

A. No, sir; I have never seen any such point, and neither have I ever run across any shipment consigned to it; but if there is such a place, I would be interested in it.

Q. Now, witness, what other points, if any, between there and Cadillac do you serve? 'Are there any more points?

A. Yes, sir; there is on little point calling Dewing.

Q. Dewing?

A. Yes, sir. That is just a little crossroads point, with only one store there, I believe, or something like that.

913 Q. Are you familiar with the town by the name of Belmont?

A. Yes.

Q. If so, where is that point located?

A. Well, Belmont is located off of highway 131. It is just onthe River Road out of Grand Rapids. We are certificated to serve it.

Q. It is close to Grand Rapids?

A. Yes.

Q. I mention that, because applicant's exhibit No. 7 here lists that town as an intermediate point to be served. How far from

Grand Rapids is it?

A. Well, as I just stated, it is on the River Road, close to Grand Rapids, through Comstock Park, on the road to Rockford. It is approximately seven miles, I would say, from Grand Rapids.

Q. Do you serve both Comstock Park and Belmont?

A. Yes.

Q. What is the size of those communities?

A. Oh, Comstock Park has a population of about 1,000, I should judge.

Q. And Belmont?

A. Belmont is very small.

Q. Now, Witness, are you rendering a regular scheduled daily service over any of these routes that you have described?

A. The Darling Truck Line renders a regular daily service between Grand Rapids and Big Rapids, making a round trip, leaving Grand Rapids at 8 o'clock a. m. in the morn-

ing, and leaving Big Rapids at 2:30 o'clock p. m. in the afternoon. That is one schedule. Our other schedule is set up so that the Cadillac truck leaves Grand Rapids at midnight, and we maintain a terminal at Reed City, with an agent there, and freight is loaded and unloaded onto and off the Cadillac truck at Reed City during the night, so that the truck arrives in Cadillac for 7 o'clock distribution the next morning. That same truck then leaves Cadillac at 7 o'clock p. m. that evening, and operates back to Grand Rapids,

Q. Now, referring to the segment of your operation to the north;

how do you operate there?

A. Well, from the north we operate out of Traverse City into Manistee, Ludington, and Cadillac.

Q. How frequently is that schedule operated?

A. Daily.

Q. Daily service.

A. Yes.

Q. And you make a junction with the south-bound trucks, do you?

A. Yes.

Q. So that merchandise can move on through to points south? A. Yes, sir; we do. We, make direct connection there with Associated Truck Lines, Interstate Motor Freight System, Wolverine Motor Express, and other truck lines that operate into Cadillac.

Q. Do you have, in addition to that, daily service from Grand Rapids all the way up to your northernmost point?

A. Yes, sir; we do, via other routes.

Q. Well, regardless of the route, do you serve Traverse City with a regular, scheduled, daily service?

A. Yes.

Q. All right. Now, going north of Cadillac, I will call your attention to certain towns here, and ask you to state if you serve them, or any of them, in your operation. These towns are set forth here by the applicant in its exhibit No. 7. The towns are named as Manton, Fife Lake, Kalkaskia, Antrim, Mancelona, Alba, Boyne Falls, Petoskey, Bay View, Conway, Alanson, Brutus, Pellston, Levering, and Sumner.

A. No, sir; we do not operate in connection with Parker Motor Freight—we do not have any connection with Parker Motor

Freight at Cadillac.

Q. Do you serve South Boardman, Elmira, or Walloon Lake!

A. No.

Q. Who serves those towns?

A. Parker Motor Freight.

Q. Do you have some connection with them at Cadillac on that operation?

A. We operate a joint terminal there, and interchange freight

at that terminal, is all.

Q. Can a shipment that is coming-from some point out of the state move to your joint terminal there at Cadillac by some other carrier, other than your own?

A. Oh, yes, sir; most certainly it can, and it does.

Q. Well, for example, taking shipments starting at either Chicago, or South Bend, or Fort Wayne, and moving up to some of these points that we have just named, which you say are served by Parker Motor Freight; do you know whether or not those movements come directly into Cadillac by some other line?

A. Yes, sir; they do. Interstate Motor Freight System and Associated Truck Lines serve Cadillac daily out of Chicago; and also Cadillac is served out of Chicago by Mc Vicker, and the Wolverine Truck Line—or rather, I should say, by Wolverine Motor

Express.

Q. Now, there are still two or three other points named here. Witness, and I am wondering whether or not you serve any of them. How about this first one here; Kegomic? Do you serve that?

A. No.

Q. Have you ever heard of that town?

A. I never heard of it, and I don't serve it.

Q. How about the town of Harbor Springs? Do you serve that?

A. No, sir; I do not. That point is served by Parker Motor Freight.

Q. And the other town-how do you pronounce that-Weque-

tonsing?

A. That is also a Parker point.

Q. Now, on the route directly between Cadillac and Traverse City, do you serve any of the intermediate points of Man-

917 ton, Walton, Summit City, Kingsley, and Mayfield? Do you serve any of those points?

A. No.

Q. Who does?

A. Parker Motor Freight.

Q. That, again is their route, is it?

A. Yes.

Q. Do you interline freight regularly at Cadillac with Parker Motor Freight for those points?

A. Yes.

Q. You do not serve Lake City, do you?

A. Only by the Iverson Motor Truck out of Cadillac.

Q. Out of Cadillac?

A. Yes.

Q. Do you serve Lucas?

A. No.

Q. Or Falmouth? .

A. No, sir. Those are served by Iverson also.

Q. Now, do you serve, coming a little bit south, either of the towns of Ravenna or Conklin?

A. No, sir.

Q. Do you know what line does serve those points?

A. I believe Bishop Motor Express.

Q. Now, how many pieces of equipment are you operating in your service at the present time?

18 A. About 50.

Q. In that figure are you including both tractor and trailer equipment as separate units?

A. Yes.

Q. Is that split about half and half?

A. Approximately so; yes.

Q. Has The Pennsylvania Railroad approached you with respect to your furnishing any service to or from any of the points that you serve on your line?

A. No; they never have.

Q. You are familiar with the nature of the application that is here under consideration, are you not?

A. I believe so.

Q. And the service that The Willett Company is proposing to furnish?

A. I believe I am.

Q. You were at the hearing at Indianapolis, when the case of the applicant was presented, were you not?

A. Yes.

Q. If The Pennsylvania Railroad should request you to furnish this service, would you do so?

A. Yes, sir; I would. I am at the present time serving the Pere Marquette Railroad in that same capacity.

Q. That is something that has been recently undertaken?

A. Yes.

919 'Q! By the way, Witness, in connection with your serving the Pere Marquette Railroad, what towns are involved in

the furnishing of that service?

A. We serve the Pere Marquette Railroad out of Muskegon, Michigan, to the towns of Twin Lake, Holton, Brunswick, Reeman, Fremont, Hesperia, Etna, White Cloud, Bishop, and Newaygo.

Q. Those points are on your route that runs down to Muskegon

over 131; is that correct?

A. Yes.

Q. And is the service rendered over that particular route a service in connection with which the railroad company brings the merchandise to some particular point, and then transfers it over its dock to your trucks?

A. We pick it up at their Muskegon freight depot, and deliver

it to their various depots along the line.

Q. You heard the witnesses for the applicant testify at Indianapolis with regard to how they propose to have The Pennsylvania Railroad handle the freight in conjunction with The Willett Company, did you not?

A. Yes.

Q. Is there any difference between the manner in which you are presently handling freight for the Pere Marquette Railroad Company, and the manner of handling involved in the proposal of the applicant here, as you heard it described in this case?

A. No, sir; there is not; none whatsoever. The method by which we are handling it is identical with the way in which they propose to have The Willett Company handle

it for them. .

Q. Now, Witness, do you have some idea as to the amount of tonnage that may be moving on your line at the present time to and from the points you serve that are embodied and included in this application?

A. I have some knowledge; yes.

Q. Do you have some figures here today, that will give the Board and the Commission a picture of the volume moving into and out of those towns?

A. Well, I haven't prepared any exhibit that can be presented

at this time; no, sir.

Q. Well, without going into detail, then, since you say you do not have an exhibit prepared, do you have in mind some approximate figures as to the tonnage that may have moved via your line into and out of the towns along your routes, that are involved in this application?

A. Well, we handle approximately 4,000,000 pounds per month

into and out of those various towns that I have named.

Q. That is, in total?

A. Yes, sir.

Q. Now, Witness, is that figure based upon your last year's operations, or what?

A. No, sir; it is not. It is based upon current operations.

Q. Is that figure about the same as, or higher, or lower than, the figure for about the same period last year?

A. About 10 percent higher than last year.

Q. With respect to movements to any particular town, without going into detail as to the exact tonnage, how is the tonnage divided up among the towns?

A. (No answer.)

Q. In other words, considering the operations at all of the towns that are served—or rather, that are proposed to be served by The Willett Company, and which you serve: about what part of the tonnage goes to each of those towns?

A. Well, it would be my opinion that Rockford, Big Rapids, Reed City, Cadillac, and Traverse City, would take about 80 per

cent of the tonnage.

Q. And the rest of it, the remaining portion, would be divided up among all of the little towns equally—or approximately so; is that correct?

A. Approximately equally; yes, sir.

Q. Now, of those points which you have just named, which is the biggest point—Traverse City, Rockford, or Cadillac?

A. Well-

Q. From a tonnage standpoint.

A. No, sir; none of those towns. Big Rapids is our heaviest tonnage point, due to the defense work that is going on there.

Q. Oh, I see. That is something of comparatively recent origin, then, is it?

22 A. Yes.

Q. That has taken the place of some other tonnage; or is it

just a new development there?

A. It is an extension, and expansion of an industry that was already established there, and due to the war and rearmament, they have heavy contracts there.

Q. All right. Now, that takes about what part of that 80 per

cent?

A. The town of Big Rapids, as far as our tonnage is concerned, will take about 50 per cent.

Q. Then would the balance of the towns, the other three towns,

split up the remainder pretty well between themselves?

A. Yes, sir; approximately equally.

Q. Now, we have been speaking of both out-bound and in-bound tonnage. How does the out-bound tonnage compare with the inbound tonnage at these various points, stated in terms of percentage?

A. We are loaded to capacity in both directions.

Q. Well, I do not mean that, Witness. I mean, for example, is the tonnage the same in-bound-

A. Oh, no.

Q. As out-bound?

A. No.

Q. Which is lighter?

A. The out-bound tonnage is lighter.

923 Q. By about how much?

A. About 65 per cent.

Q. In other words, there is about a 65-35 per cent break, then; do I understand you correctly?

A. Yes, sir:

Q. All right. Now, you are speaking only of your own tonnage, are you not?

A. I am only testifying with respect to our own movements, of

course; yes, sir.

Q. Now, you are fairly well acquainted with the operations of the carriers that you are competing with at these towns, are you not?

A. I am acquainted with their operations; yes, sir.

Q. Do you have any present knowledge as to about what part of the total tonnage, that all of the common motor carriers may be handling into and out of these towns, is represented by the tonnage that you are handling at these various towns?

Mr. HARRY YOCKEY. Just a moment. I object to the question. The witness has not been qualified to give any testimony along that

line.

Mr. CLARDY. I am merely asking him if he knows.

Mr. BARKELL. Oh, let the witness answer the question, if he knows.

A. I don't know.

By Mr. CLARDY:

- 924 Q. You do not have any accurate figures with respect to how much the other carriers are hauling?
 - A. No, sir; I don't. I have no access to their records, of course.
- Q. Well, just so that we can form the comparison ourselves, would you just check me on this: your present volume, both inbound and out-bound, you say is about 4,000,000 pounds.

A. Yes.

Q. For what period was that, again?

A. Per month.

Q. 4,000,000 pounds per month.

A. Yes.

Q. Now, taking these small towns which you have named, without going into each one of them separately: you named a num of them that you said have a population of 300 or less.

A. Yes.

Q. At the present time is there any industrial movement to or from any of those small towns?

A. No.

Q. Is the movement principally that of foodstuffs, or such commodities as are generally handled in daily, consumer use?

A. Foodstuffs, and agricultural supplies.

Q. Would that about cover it?

A. Yes, sir.

Q. Is it fair to say also that, as far as the out-bound movement from those towns is concerned, it is negligible?

25 A. Right.

- Q. Or is that an extravagant understatement, as to the actual situation?
- A. No, sir; it is not. You have not underestimated it. There is no out-bound movement.

Mr. CLARDY. That is all.

Mr. BARKELL. Cross-examine.

Mr. HARRY YOCKEY. Will the Joint Board indulge us here for just a moment, please.

Mr. BARKELL. Certainly.

Mr. HARRY YOCKEY. No questions.

Mr. BARKELL. Are there any questions up here?

Mr. Eggers. No.

Exam. BRYAN. I have no questions.

Mr. BARKELL. That seems to be all, then, Mr. Darling. You may be excused.

The WITNESS. Thank you.

(Witness excused.)

Mr. CLARDY. I offer protestants' exhibit No. 19 in evidence.

Mr. BARKELL. Is there any objection?

Mr. HARRY YOCKEY. No objection.

Mr. BARKELL. There being no objection, protestants' exhibit 19 is received in evidence and made a part of this record.

(Protestants' exhibit 19, Witness Darling, received in evi-

dence.)

926 Mr. CLARDY. That first exhibit, that I had identified this morning, I did not offer, because we have not as yet concluded with the direct examination of Mr. Parker.

Mr. BARKELL. You are referring now to protestants' exhibit No.

14, are you?

Mr. CLARDY. Yes.

Mr. HARRY YOCKEY. Oh, that can go in, as far as the are concerned, your Honor. However, may we have this understanding—

Mr. BARKELL. Well, now, just a moment, Mr. Yockey. Let us

dispose of the exhibit first.

Mr. HARRY YOCKEY. That is what I want to talk about.

Mr. BARKELL. All right.

Mr. HARRY YOCKEY. May we have the understanding that this map, and all of these maps, conform to the certificates which these particular companies have?

Mr. CLARDY. Oh, yes; and I told you that we would give you the

certificate number, and it is right here on the map.

Mr. HARRY YOCKEY. All right. Mr. CLARDY. It is right there.

Mr. BARKELL. There is no objection to protestants' exhibit No. 14, then, as I understand it.

Mr. HARRY YOCKEY. No.

Mr. CLARDY. I-will offer it in evidence, then.

Mr. BARKELL. There being no objection, protestants' 927 exhibit 14 is received in evidence and made a part of this record.

(Protestants' exhibit 14, Witness Parker, received in evidence.)

Mr. BARKELL. Now, I believe that the other exhibits have already been admitted.

Mr. CLARDY. That is correct, your Honor. Those were exhibits 15, 16, and 17, I believe.

Mr. Anderson. Yes; protestants' exhibits 15, 16, and 17 have already been received, the record will show.

Mr. BARKELL. Very well. That disposes of the exhibits up to date, then.

Mr. CLARDY. Protestants' exhibits 14 to 19, both inclusive, then, have been received in evidence.

Mr. BARKELL. Yes. Off the record.

(Discussion outside the record.)

Mr. BARKELL. Now back on the record. We will adjourn at this time until 9:30 tomorrow morning, at this same place.

(At 5 o'clock p. m., June 1, 1942, hearing adjourned until June

.2. 1942, at 9:30 a. m.)

928

STATE OFFICE BUILDING.

Lansing, Michigan, June 2, 1942.

Met, pursuant to adjournment at 9:30 a.m.

Before Joint Board No. 23, represented by : Richard H. Barkell, Michigan; Oliver H. Eggers, Indiana.

Present: WALTER W. BRYAN, Examiner.

Appearances: As heretofore noted and the following additional: Frank C. Devlin, 1311 East Michigan Avenue, Kalamazoo, Michigan, appearing for Keeshin Motor Express Co. Inc.

PROCEEDINGS

Mr. BARKELL. Come to order, please, gentlemen. Are you ready to proceed, Mr. Clardy, or Mr. Des Roches?

Mr. Des Roches. Yes, sir.

Mr. BARKELL. Call your next witness.

Mr. Des Roches. Mr. Duncan.

G. H. Duncan was sworn and testified as follows:

Direct examination by Mr. DES ROCHES:

929 Q. Mr. Duncan, will you give your full name to the Reporter, please?

A. G. H. Duncan.

Q. Where do you hve.?

A. Detroit, Michigan.

Q By whom are you employed?

A. Associated Truck Lines.

Q. In what capacity?

A. General freight agent.

Q. How long have you been employed by that company?

A. Since approximately '38.

Q. Since 1938?

A. Yes, sir.

Q. Associated Truck Lines is a common motor carrier?

A. Yes.

Q. Of commodities generally?

A. Yes.

Q. Operating both in intrastate commerce and interstate commerce?

A. Yes.

Q. Where is the principal place of business of the company?

A. The general headquarters of the company are located in Grand Rapids, Michigan.

Q. Approximately how many pieces of equipment does the company operate at the present time?

A. 400.

930 Q. Will you please describe for the record, generally, the operating rights that are possessed by the company.

A. From Detroit, Michigan, to South Bend, Indiana, over U. S. highway 112, U. S. highway 12, and M-40, serving all intermediate points. From Detroit to Benton Harbor and St. Joseph, Michigan, over U. S. highway 12, serving all intermediate points, such as Ann Arbor, Jackson, Battle Creek, Kalamazoo, to Benton Harbor and St. Joseph. From South Bend, Indiana, over U. S. highway 31, to Benton Harbor, Michigan, and north to Manistee, Michigan, serving all intermediate points. From Detroit to Grand Rapids and Muskegon, Michigan, on U. S. highway 16, serving all intermediate points. Also various other routes, off routes, from those main arteries.

Q. Did you mention the operating rights of the company into

and out of the Chicago area also?

A. No, sir; I did not. We also serve Chicago, Illinois, from all points via U. S. highway 31, and Indiana highway 20.

Q. New, you have been present here in attendance on this hearing during the past day, have you not?

A. Yes.

Q: You are familiar, I take it, with the application which is under consideration here?

A. I believe I am fairly familiar with it; yes, sir.

Q. I show you now a copy of applicant's exhibit No. 2 in this proceeding, which covers the routes involved in this application. Will you refer to that exhibit, please, and give us

the names of the points that are covered there, that are personal by your company, and for the benefit of opposing composing composing the sel, who may want to make a note of them, do it a little bit slowly, please?

A. Sturgis.

Q. Sturgis, Michigan?

A. Yes, sir.

Q. Yes.

A. Kalamazoo.

Q. Do you want a larger map?

A. No.

Q. All right.

A. I think I can find them all right on here.

Q. All right. Go ahead.

Mr. HARRY YOCKEY. Just a moment. Do you-have a map that you are going to introduce, with copies of it for us?

Mr. Des Roches. Which do you mean?

Mr. HARRY YOCKEY. This one here?

Mr. Des Roches. This is your own exhibit, Mr. Yockey. I have no copies of that.

Mr. HARRY YOCKEY. I am referring to the one that the witness

is now using.

Mr. Des Roches. That is the same thing that I am talking about. That is your own exhibit, Mr. Yockey; a copy of your own exhibit, one of applicant's exhibits.

32 · Mr. HARRY YOCKEY. I mean, your own map.

Mr. DES ROCHES. Of Associated?

Mr. HARRY YOCKEY. Yes.

Mr. DES ROCHES. Oh, no.

Mr. HARRY YOCKEY. Covering their operations.

Mr. DES ROCHES. No.

Mr. HARRY YOCKEY. All right.

By Mr. Des Rochès:

Q. Go ahead, Mr. Duncan:

A. Martin.

Q. Now, just a moment, right there. Sturgis is located on what route, or what highway?

A. U. S. 112.

Q. U.S. 112?

A. Yes.

Q Can you state the population of Sturgis?

A. Oh

Q. In approximate figures.

A. I don't know exactly just offhand, but I would say about two or three thousand, just as a rough estimate.

. Q. All right. What is the next point?

A. Kalamazoo.

By Mr. EGGERS:

Q. Kalamazoo?

A. Yes.

By Mr. DES ROCHES:

Q. Does your company operate a terminal at either Sturgis or Kalamazoo!

A. We operate a terminal at Kalamazoo, yes, sir, and 933 we are making arrangements for a terminal at Sturgis at the present time.

Q. What terminal presently takes care of your business at

Sturgis, then!

A. Kalamazoo.

Q. The Kalamazoo terminal?

A. Yes.

Q. What is the mileage between Sturgis and Kalamazoo?

A. I will have to check that.

Q. Approximately!

A. Approximately 50 miles.

Q. 50?

A. Yes.

Q. All right, Now go on from Kalamazoo.

A. The next terminal would be Shelbyville.

Q: Is that the next point on that line?

A. Well, I mentioned Martin a moment ago, but I don't know whether the Reporter got it or not.

Mr. BARKELL. Did you get that, Mr. Reporter?

(The record was read.)

Mr. BARKELL. Go ahead.

By Mr. DES ROCHES:

Q. All right. We have Martin.

A. Yes.

Q. And Shelbyville?

A. Yes, sir. 934

Q. What is the next point? Go right along.

A. Wayland, Moline, Grand Rapids, Rockford, Big Rapids

Mr. HARRY YOCKEY. Just a moment.

Mr. DES ROCHES. Rockford.

The WITNESS, Yes.

Mr. DES ROCHES. And Big Rapids.

The WITNESS, Yes.

By Mr. Des Roches:

Q. Yes!

A. Cadillac.

Q. Now, Mr. Witness, have you covered all of the points on that map!

A. Yes.

Q. All of the points.

A. All of the points that are served by Associated Truck Lines, yes, sir—or rather, no. I beg your pardon. I am sorry. There are still some other points.

Q. What are they!

A. Muskegon. Q. What else?

A. Well, now, I belive that is the only other point; Muskegon. Let me see a moment here, please. Yes, that is correct. Muskegon is the only other point.

Q. Now, are all of those points that you have just mentioned, that are served by Associated Truck Lines, served by your

935 company out of its Kalamazoo terminal?

A. No, sir, they are not all served out of Kalamazoo. Those points are served out of several terminals.

Q. Will you explain.

A. The points south of Kalamazoo would be served from the Kalamazoo terminal, and points between Kalamazoo and Grand Rapids are partly served out of Kalamazoo, and partly served out of Grand Rapids. The points mentioned north of Grand Rapids—Rockford and Big Rapids—are served from Grand Rapids. Muskegon, of course, is a terminal point, and is served from all other points.

Q. Now, Mr. Witness, what schedule of operations does your company operate between, say, Chicago and Sturgis, Michigan?

- A. Well, we have a daily service between all of those points. Between certain points the traffic is heavy enough to warrant more than one run, but there is always at least one run daily.
 - Q. Do you mean by that, over-night service?

A. Yes.

Q. And what is the situation between Toledo, Ohio, and any one of these points?

A. It is the same. That is, we render an over-night service

from Toledo to any of these points.

Q. What is the situation between South Bend, Indiana and any one of these points?

A. The same.

36 Q. Daily, over-night service?

A. Yes.

- Q. Does your company serve any other point or points in the state of Indiana, outside of South Bend, Indiana?
 - A. Yes.

Q. Where?

A. Oh, we serve Elkhart, Goshen, and Mishawaka.

Q. And what is the situation—or what is the fact as to your schedule between any one of those points, and any of the points in Michigan covered by this application?

A. The same.

Q. That is, the same service?

A. Yes, sir.

Q. Daily, over-night?

A. Yes, sir.

- Q. Do you know whether or not there are other common motor carriers that are operating between the points you have just mentioned?
 - A. Yes, there are several.

Q. Name them.

Mr. HARRY YOCKEY. Well, now, just a moment. I am going to object to that, if the Joint Board please, unless the witness is able to tie them up with specific routes which are mentioned in. the application.

Mr. Des Roches. All right. Will you just go ahead and tie them up, Mr. Witness, with specific routes that are in-

volved here.

Mr. HARRY YOCKEY. That is, as set forth in applicant's exhibit No. 2.

A: Well, Wolverine Motor Express serves a number of the points, and Interstate Motor Freight System serves other points The Dallas L. Darling Truck Company serves a number of points. Parker Motor Freight serves quite a number of points. Doyle Freight Lines serves some of the points.

By Mr. DES ROCHES:

Q. Would you say that Keeshin Motor Express serves any of these points?

A. They do on interstate traffic; yes, sir.

Q. Any others?

A. That is about all that I can think of.

Q. Does your company have equipment available and on hand at the present time to take care of the needs of the shipping public along the route involved in this application?

Q. Is all of your equipment loaded to capacity at the present time?

A. No.

· Q. In other words, then, you do have equipment available to take, care of any additional business that might be tendered to you?

Q. Is your company familiar with the type of operation involved in the operation which is here proposed?

A. Yes.

- Q. As a matter of fact, are you carrying it on-meaning by "you," your company—at the present time?
 - A. Yes, sir.

Q. For whom?

A. The Pere Marquette Railroad Company.

- Q. For how long a period of time has your company been doing that?
 - A. Well, we started on May 25th.

Q. 1942?

A. Yes, sir.

Q. And that is under an agreement entered into between your company and the Pere Marquette Railroad, is it?

A. Yes.

.Q. Covering operations between what points?

A. We interchange freight with the Pere Marquette Railroad

at Holland and Muskegon, Michigan.

Q. Do you know of your own knowledge whether or not the Pere Marquette Railroad Company has entered into the same arrangement with other common motor carriers here in the state of Michigan?

A. Yes.

Q. With what other carrier or carriers?

A. Why, I know that they have got a similar arrange-

ment with Interstate Motor Freight System.

Q. Do you know of any reason why your company could not handle the truck business, or perform the trucking service involved in this application—

A. No.

Mr. DES ROCHES. Let me finish.

By Mr. DES ROCHES:

Q. If The Pennsylvania Railroad Company saw fit to tender the business to your company?

A. No, sir; I do not. I see no reason at all why we could not

handle it satisfactorily.

Q. Would your company be fit, willing, and able to carry on such an operation, if the business were tendered to it?

A. Yes.

Q. You have equipment available for that purpose?

A. Yes.

Q. You feel that your company is peculiarly suited and adapted to carry on the operation in question, do you?

A. Yes, sir.

Mr. DES ROCHES. That is all.

Mr. HARRY YOCKEY. May I proceed!

Mr. BARKELL. Just a moment, please, Mr. Yockey. Do you have any questions of the witness, Mr. Clardy?

Mr. CLARDY. Yes.

Mr. HARRY YOCKEY. All right.

By Mr. CLARDY:

Q. Witness, did I correctly understand you to say that you had attended the prior hearing at Indianapolis?

A. In this case?

Q. Yes.

A. Yes, sir.

Q. You heard the testimony at that time, then, of the witnesses presented on behalf of the applicant, describing the kind of operation, and the schedules that they propose to operate in carrying it on, did you not?

A. Yes.

Q. All right. Now, I direct your attention to the particular towns which you serve on routes involved in this applicationand by the way, do you have a copy of applicant's exhibit No. 4 before you there?

A. No.

Q. Very well. Here is a copy.

A. I was told that this other one was a copy of applicant's exhibit No. 2, and that is the way it appears to be marked here.

Q. Yes; it is so marked. Here is a copy of applicant's exhibit No. 4 in this case.

A. All right.

Q. You now have applicant's exhibit No. 4-or rather, a copy . thereof, before you, have you?

A. Yes, sir.

Q. Very well. Now, I direct your attention first, Witness, to the towns south of Kalamazoo, between that point and Sturgis, Michigan, first. Looking at the first two lines on applicant's exhibit No. 4, which show the proposed departure and arrival times from and at Fort Wayne, Kalamazoo, and so forth, I want to ask you first if you are familiar with the nature of the business, or businesses, that are presently carried on at the towns which you serve on that particular route, so as to know something about what time of the day or night the shippers or receivers of freight in those particular towns have requested your company to furnish service?

.A. (No answer:)

Q. In other words, Witness, I want to know if you presently have in mind something about the hours of operation into and out of the towns on that part of the route which you serve; so that you can tell us whether or not the hours that are set forth on applicant's exhibit No. 4 here are hours that will coincide with the actual times of pickup and delivery that will meet the needs of the shipping public in those towns along that part of the route.

Mr. HARRY YOCKEY. Well, now, just a moment. I want to object to that, if the Joint Board please, as not being involved here at all; as to what particular customers, or what particular shippers and receivers of freight, may need. This is an application whereby

we are attempting to put in this service specifically and only for The Pennsylvania Railroad, fitting it into the train

• schedules of the railroad; and as to whether or not it is that kind of schedule that suits the customers of the company represented by this witness, or the customers of anybody else,

is certainly not involved here.

Mr. Clardy. Well, it is involved, your Honor. The viewpoint expressed by counsel for the applicant is perfectly proper, of course, if that is what he believes; but we do not agree with that theory at all. The public, and not The Pennsylvania Railroad Company, is concerned here, and all that we are now endeavoring to show is that these proposed schedules will not meet the convenience and the needs of the public, even if they do meet the needs of The Pennsylvania Railroad.

Mr. BARKELL. That objection will be overruled, and the witness

may answer the question.

A. Well, to operate under these schedules here, from my own experience, would mean a second-day delivery, rather than an overnight delivery.

By Mr. CLARDY:

Q. Why do you say that?

A. Well, the only town that we serve south of Kalamazoo on this particular route is Sturgis, Michigan, and practically all of our daily pickups are made after 3:30 o'clock in the afternoon.

Q. Why is that?

A. Well, it is just the natural custom of the shippers to do their packing during part of the day, so that they do not have their shipments ready until sometime late in the afternoon.

Q. And you have accordingly adjusted your schedules,

A. Yes.

Q. To meet that kind of an operation?

A. Right.

Q. Now, Witness, you have had a considerable amount of personal experience in the solicitation of business at both Sturgisand Kalamazoo, Michigan, have you not? A. Yes, sir; I have. I have been at both of those points quite a number of times.

Q. Then, I take it that you know something about the manner in which the shipping public, particularly at those points, carries on its transportation operation; is that correct?

A. Yes.

Q. All right. Now, if this particular schedule which is proposed in applicant's exhibit No. 4 here, should be adhered to, to meet the convenience of The Pennsylvania Railroad, showing an arrival, after the truck has left Fort Wayne and Kalamazoo, at 11 o'clock a. m., and a departure, the other way, at 4 o'clock p. m., do I correctly understand you to say that that would result in your judgment in a delay of 24 hours?

A. Yes, it would.

Q. All right. Now, let us go north of Kalamazoo. How far north do you run from that point on through?

A. Well, we operate all the way up to Cadillac, Michigan, but there are a number of towns that we serve between Kalamazoo and Grand Rapids, that are not set forth in

applicant's exhibit No. 2 here.

Q. All right. Looking at that part of the route, then, between Kalamazoo and Grand Rapids, and noticing that the southbound movement from Grand Rapids leaves Grand Rapids at—well, now, I cannot tell from my copy whether it is a. m., or p. m. I cannot read the first one there, but I believe it is 11:30-something. Is that a. m. or p. m.?

Mr. EGGERS: A. M.

Mr. CLARDY, It is blanked out on mine.

By Mr. CLARDY:

Q. What does the copy that you have in front of you there show, Witness?

A. I read it as 11:30 a. m.

Mr. HARRY YOCKEY. It must be a. m.

Mr. CLARDY. Yes; it must be, because Kalamazoo is 2:40.

By Mr. CLARDY:

Q. Now, Witness, I have asked you—or I am asking you the same question with respect to the towns along the way between Grand Rapids and Kalamazoo.

A. That is-

Q. As to whether or not this particular schedule, as set up on applicant's exhibit No. 4 here, would operate at times that would best suit the shipping times of the shippers at these particular points.

A. Well, the schedule leaving Grand Rapids at 11:30 o'clock in the morning, would be out of line, would be too early for

945 the shippers there to make shipments on that particular day. Those shipments would be shipments that had been picked up the day previous—or rather, I mean to say, that had been made ready the day previous.

Q. In other words, a shipment to move on that 11:30 a.m. southbound trip, would necessarily be something which the shipper

had ready the day before; is that correct?

A. Yes, sir; my experience would lead me to believe that that would have to be the situation.

Q. By the way, Witness, your home terminal—that is, the home terminal of your company—is at Grand Rapids, is it not?

A. Yes.

Q. That is the principal point from which the company radiates its operations; is that correct?

A. Yes.

Q. All right. Now, Witness, I believe that you were discribing—well, did you give us the size of the towns between Grand Rapids and Kalamazoo?

A. I didn't give you the population of those towns; no, sir, but I can check them from the map here, if you would care to have

me do so.

Q. Yes; I would like to have you do that, because I would like to have some additional information based on that.

Mr. Eggers. We already have that information in the record, have we not, Mr. Clardy?

946 Mr. CLARDY. How is that, your Honor?

Mr. EGGERS. Do we not have that information already in the record, as to the size of those towns, the population of those towns?

Mr. Clardy. No; I do not believe you have, your Honor, as to all of those towns. You do, as to the towns in the upper end, I believe, abve Cadillac.

Mr. HARRY YOCKEY. To save time, and also to save burdening the record, can we not stipulate that the Commissión may take judicial notice of the 1940 census, with respect to the population of all of the cities and towns involved?

Mr. CLARDY. I am perfectly agreeable that that be done, if that is agreeable to the Board.

Mr. HARRY YOCKEY. All right.

Mr. BARKELL. That is perfectly agreeable, as far as we are concerned; and it may be so ordered.

Mr. HARRY YOCKEY. That will save time, and avoid burdening the record just that much.

Mr. BARKELL Yes.

By Mr. CLARDY:

Q. Well, then, I will just ask you a general question on that, Witness. The towns on the proposed route between Grand Rapids and Kalamazoo, excluding the termini points, are all small towns, are they not?

A. Why, I have just checked two of those points here, and I see that Shelbyville has a population of 100. I do not imagine that the other three towns of Martin, Wayland, and Moline, have very many more people in them, if any

more at all, than that.

Q. Is there any volume at all moving out-bound from any of these towns, if you know, between Grand Rapids and Kalamazoo?

A. It is practically nil.

Q. And is there any great amount of in-bound freight moving into any of those small inland towns?

A. No; just general merchandise.

Mr. Eggers, Off the record a moment.

(Discussion outside the record.)

Mr. BARKELL. Back on the record.

Mr. EGGERS, Pardon the interruption, Mr. Clardy. Mr. CLARDY. That is quite all right, your Honor.

By Mr. CLARDY:

Q. Now, Witness, looking at the map again, and particularly that part of it between Kalamazoo and Grand Rapids, would you give us some estimate of the amount of in-bound tonnage at those small intermediate points, that will move in there on the average over any period of time, that you desire to use, for your convenience?

A. Well, of course, in answering that question, Mr. Clardy, I can only speak for my own company.

Q. Yes; I understand that, Witness, and I am only asking you to

testify with respect to your own company.

A. We operate one small piece of equipment daily down through that territory, and it is not always loaded. That driver would not have, and he would not expect, more than three or four tons for all of the points involved.

Q. All combined?

A. Yes, sir.

Q. And that will necessarily include the freight moving from Grand Rapids to Kalamazoo, will it not?

A. No.

Q. Or the other way around, from Kalamazoo to Grand Rapids!

A. No, sir.

Q. Just the intermediate points?

A. That is all.

Q. Does that also include some off-route points? A. No.

Q. Now, Witness, is the operation which your company is conducting at the present time between Grand Rapitls and Kalamazoo, sort of a peddler service?

A. Yes, sir: it is a peddle run.

Q. Out of Grand Rapids?

A. Yes, sir; and I might add that under this new order, ODT order No. 3, we may have to curtail that service for lack of traffic.

Q. And by that do you mean that even though you are using small equipment-

A. That is it.

Q. The loading will not be enough to meet the 100 percent and 75 percent requirements? .

A. That is right.

Q. Is that operation handled in only one direction; thatis south-bound out of Grand Rapids only-

Q. Or in both directions?

A. No. sir. The three towns just mentioned are served from Grand Rapids. We load at Grand Rapids and peddle from there. However, we do serve some other points, as I mentioned before, out of Kalamazoo, but they are not shown on applicant's exhibit No. 2 here.

'Q. Points not shown on exhibit 2?

A. Right.

Q. Now, Witness, turning your attention to the next segment of the route running west between Grand Rapids and Muskegon, Michigan; how do you handle freight between those points, and what intermediate towns do you serve?

A. Well, we serve Nunica, Fruitport, and Muskegon; also

Coopersville and Marne.

Q. Those are all of the intermediate points between Grand Rapids and Muskegon, are they?

A. Yes, sir. They are not shown on this exhibit 2, however.

Q. Well, applicant's exhibit No. 2 is a railroad map, you understand, Witness.

A. Oh, yes.

·Q. So it does not show those points.

A. No.

- 950 Q. But I say, those are all of the intermediate points on the route between Grand Rapids and Muskegon; is that correct?
 - A. That is all we serve.
 - Q. Well, are there any other points in there that you know of, that might be served?
 - A. Yes.
 - Q. What?
 - A. Well, there is Spring Lake, Ferrysburg, and Grand Haven.
 - Q. Well, those are out of line; now, are they not, Witness, going to Muskegon?
 - A. (No answer.)
- Q. In other words, those are to the south and west of the direct route between those two points; are they not?
 - A. Yes.
- Q. But so far as U. S. highway No. 16 is concerned, and also 37 and 46, you have named, and you serve, all of the intermediate points; is that correct?
 - A. On 16, 37, and 46.
 - Q. Yes.
 - A. Right.
- Q. All right. Now, Witness, do you serve between those two points in the same kind of peddle operation, or is that a regular, scheduled, through run there from some other points; or just exactly what is it?
- A. Our Muskegon freight—it is a peddle movement to 951 those smaller communities between Grand Rapids and Muskegon; but Muskegon freight usually runs through, from, we will say Detroit to Muskegon, right through to Muskegon, or from Lansing to Muskegon, or from Kalamazoo to Muskegon, or from South Bend, Indiana, to Muskegon, or from Toledo, Ohio, to Muskegon.
- Q. Is there any appreciable volume of movement out-bound from any of the intermediate points between Grand Rapids and Muskegon?
 - A. No, sir; there is not.
 - Q. Is that practically nothing, as a matter of fact?
 - A. Right.
- Q. And in the case of the in-bound movement, is there any appreciable volume in total to all of those intermediate towns?
 - A. No, sir; hardly anything.
- Q. Well, now, would you give me some estimate as to about how much you think the daily average to those intermediate points combined would be?

A. Well, the daily average to those towns would be less than the figure that I gave you for those other places.

Q. It would not exceed-

A. It would not exceed—oh, two or three tons, say, perhaps, at the most.

Q. All right. Now, as to that particular run, are the ODT orders going to have any effect on your ability to operate that?

Mr. HARRY YOCKEY. Now, just a moment. I object, if the Joint Board please, to going into the ODT orders in

this proceeding.

Mr. BARKELL. I do not believe that we are interested in the QDT situation, Mr. Clardy, as far as this particular hearing is concerned.

Mr. CLARDY. Your Honor, may I be heard on that? I think you are, and I would like to point out why.

Mr. BARKELL, All right.

Mr. CLARDY. The reason why, your Honor, I think that you are interested in that situation, is this: those orders are the same as law. By the Congressional enactment under which they are promulgated, they have the force and effect of a statutory enactment; and they compel all of the carriers, including this particular carrier, to observe a certain loading in both directions. Now, what we are proposing to show by this festimony is that the volume of freight to and from the towns involved will not be sufficient to permit the present carriers, without combining their efforts, and pooling their traffic, to comply. Otherwise, they will not be able to comply; and therefore, by inference, we are showing the fact that the railroad company will not be able to comply with the ODT orders; and since that is a requirement of the law, you cannot, as we see it, grant the authority requested here unless and until the applicant has refuted the showing that we are making, through this kind of testimony.

Mr. Ecores. That is strictly an operating problem,

though, is it not, Mr. Clardy?

Mr. CLARDY. No.

Mr. Eccens. Of each individual carrier?

Mr. Clardy. No, your Honor; it is much more than an operating problem. It is now a legal requirement that they must meet, and if they cannot show that they are going to be able to comply with that requirement, then certainly the Commission is not authorized to issue a new order permitting this new operation, because that involves the question of public convenience and necessity. Furthermore, it shows it in two ways. By showing an inability to comply with the ODT order, it also shows that the volume of traffic is such, since we cannot comply with that, as not to necessitate any additional service, and in fact not all of the present

service; so by asking that one question, as to whether they can or cannot comply with those orders, it sums up in effect the factual situation with regard to the volume and amount of traffic, which certainly is pertinent on the question of public convenience and necessity; because if the volume is less than that amount, then there is no need for any additional service. That is why I wanted to go into it, your Honor. It will not be more than just a single question or two on each of these routes, but I do want that in the record.

Mr. HARRY YOCKEY. If there is any doubt in the mind of any member of the Joint Board, I would like to say something on it, but I do not want to take the time and burden the record, unless it is necessary.

Br. BARKELL. Off the record.

(Discussion outside the record.)

Mr. BARKELL. Back on the record.

Mr. CLARDY. Now, your Honor, may I have a ruling on the record. I understand from your informal ruling just now off the record, that I am to be precluded from asking any further questions of this witness, or any other witness, as to how the ODT orders would affect, if at all, his operation?

Mr. BARKELL Right.

Mr. CLARDY. Is that correct ?

Mr. BARKELL. That is correct. .

Mr. CLARDY. Well, then, I would like to merely make an offer of proof, with respect to this particular witness, and then we will apply it to the other witness; and my offer of proof is that, that if this witness were permitted to go into that matter, he would testify that his company is, and will be, unable to meet the requirements as to leading contained in the ODT orders, unless there is a system of combining the freight handled by his company and other lines, over these various routes.

Mr. HARRY YOCKEY. I renew the objection.

Mr. BARKELL. Sustained.

Mr. Clardy. Well, then, your Honor, I will try to get at it in another way, if I can.

By Mr. CLARDY:

Q. Witness, with respect to the movement particularly between Muskegon and Grand Rapids, serving those intermediate points: does your company have a sufficient volume of freight offered to it over that route, so that it is able to move at full capacity, the vehicles which it uses in that operation?

Mr. HARRY YOCKEY. Just a moment. May I inquire now, your

Honor, as to which one he is talking about.

Mr. CLARDY. Which one of what?

Mr. HARRY YOCKEY. The witness has already testified that over this particular route some of the freight comes from one point in a through run from one point, and some of it comes in a through run from some other point. Now, which one do you mean, which one are you talking about—or do you mean all of them, Mr. Clardy?

Mr. Claror. Your Honor, I thought my question was perfectly clear, but perhaps it was not. I said, in his operation between Grand Rapids and Muskegon, serving the intermediate points. I am merely asking the witness if, in carrying on that operation, the equipment that his company uses is loaded to its full capacity at all times when it is performing that service.

Mr. BARKELL. Answer the question.

A. No; it is not.

By Mr. CLARDY:

Q. Is it loaded to as much as 75 per cent of 1166 its capacity in either or both directions?

A. No; it is not.

Q. About what size equipment does your company use in its service at the intermediate points on this particular part of the route?

A. Well, at the present time we are only using a 14-foot stake

job in that particular operation.

Q. Is that 14-foot stake job one of the smallest units that your company operates?

A. Yes.

Q. And that vehicle, as I understand your testimony, is only

lightly loaded on this run; is that correct?

Yes, sir; that is correct; and I would like to add that any further diversion of traffic there would probably result in curtailing the service to an operation one or two days per week, rather than a daily operation.

Q. Is your company the only carrier that is presently rendering service at these intermediate points between Muskegon and Grand

Rapids?

A. No; there are others.

Q. Would you name some of those others.

A. Well, there is Warren Truck Lines, Interstate Motor Freight System, U. S. Truck Company, Doyle Freight Lines, and Vyn Company.

By Mr. HARRY YOCKEY:

Q. Vyn?

A. Yes.

957 By Mr. CLARDY:

Q. Yes?

A. That is all that I can recall.

Q. Do Michigan Messengers operate there?

A. Oh, that is right; yes, sir.

Q. Does your company at the present time have under consideration some arrangement with some of these other carriers for the combining or pooling of all of your traffic, so as to eliminate ome of these operations?

A. Yes, sir; we have had several meetings in the past couple of weeks with various other companies, endeavoring to work out a plan, or a means, of giving daily service to these small, intermediate points, with the thought of loading 100 per cent outbound, and 75 per cent in-bound. So we are endeavoring to work out some plan with a few of the other lines, whereby we will probably turn all of our freight over to them for certain points, and they on the other hand will do the same thing with us, turn all of their freight over to us for certain other points. That is the same principle that the Pere Marquette Railroad Company is working on.

Mr. Harry Yockey. Well, now, just a moment. I want to object again, if the Joint Board please, to going into the Pere Marquette Railroad principle, or plan. That is not involved here.

Mr. CLARDY. Oh, but it is, your Honor, because it is the precise kind of service that The Pennsylvania Railroad Com-

958 pany is asking for here.

Mr. Harry Yockey. No; your Honor. We are getting into something altogether different now. If you permit Mr. Clardy to bring that in, then you have another issue; as to whether it is the same, or whether it is not. I say again, it is a comparative proposition, that is not involved here at all. The mere fact that it might fit it on some other railroad at some other point, certainly cannot have any possible bearing here. As I say, it just goes into another issue. We have no way of going into what the Pere Marquette Railroad operation is. How can we cross-examine this witness on that? The Pere Marquette Railroad Company is not here. That matter is not involved. It is a comparative proposition, and highly improper to go into here.

Mr. CLARDY. Your Honor, the whole question is whether this entire case shall be tried on their theory, and their theory alone; and their attitude is that we are not entitled to even think, or breath, if our theory if different from theirs. Now, I do not quarted with their viewpoint, their theory. It is their theory, and they have a right to it, but it is my contention—or, I should say, it is our contention that we are entitled to show in every way we can by

· competent proof, that the kind of service they are proposing here is precisely the kind of service that is being rendered at the present

time by the carriers that are protesting in this particular case; that it is no different from their operations; and that

therefore there is no different from their operations; and that therefore there is no reason why another truck line should be permitted to handle this business, just because The Pennsylvania Railroad Company takes the attitude that it will not do business with us. Their attitude has been here that we must try the case on the theory that they are a special law unto themselves, and that any evidence that tends to contradict what they claim the factual situation is, is incompetent. Now, counsel for the applicant is entitled to claim that there is no other thing like this on the face of the globe; but by the same token, we are entitled to show that it is a common, everyday operation, that is carried on by other carriers; and that is all that we are trying to show now.

Mr. HARRY YOCKEY. May I say something further, your Honors,

in reply to that ? -

Mr. BARKELL. Just a moment. Off the record, Mr. Reporter.

(Discussion outside the record.)
Mr. Barkell. Back on the record.

Mr. HARRY YOCKEY. If the Joint Board please, it is rather difficult to keep up with the reasoning of Mr. Clardy. Let me say that I have never yet been in a case where I have so continuously been compelled to listen to arguments that are contrary to the law. The entire theory of protestants from the very beginning of this case has been that the decisions of the Interstate Commerce

Commission are all wrong.

960 Mr. CLARDY. That is a part of our theory.

Mr. Harry Yockey. That is their theory, that all of the decisions of the Commission are wrong, and therefore, the presentation of our case should not be permitted, or should not be considered on the basis upon which we are presenting it. Now, that is all that we are asking at any time here, just to present our case from our own viewpoint; and I, on the other hand, do not have any objection to the protestants trying to get their evidence in. But the contention of Mr. Clardy here is certainly altogether untenable. The presumption here is that the Interstate Commerce Commission is going to follow the law, as it always has followed it in these other cases—

Mr. CLARDY. Oh, no.

Mr. BARKELL. Let Mr. Yockey finish.

Mr. HARRY YOCKEY. In which the Commission has held that it has no jurisdiction to compel a railroad company to deal with an independent truck line. Now, that is what the law is.

Mr. CLARDY. Well, now.

Mr. HARRY YOCKEY. The mere fact that Mr. Clardy may differ with that, does not change the situation one iota.

Mr. CLARDY. I am not going to argue the law here.

Mr. BARKELL. No. If you gentlemen want to argue the law, you will have to file a brief. We are not going to argue the law at this time here. The objection will be overruled, and an exception noted. Let us proceed.

961 Mr. Clardy. Now, Mr. Reporter, I believe that the witness was right in the middle of an answer, when he was interrupted. Will you go back and read the answer, please, as far as it went.

(Answer read.)

By Mr. CLARDY:

Q. Will you continue on, Witness, and finish what you were saying about the Pere Marquette Railroad.

Mr. HARRY YOCKEY, Then there was another question follow-

ing that, was there not?

Mr. CLARDY! No.

Mr. HARRY YOCKEY. To which I objected?

Mr. BARKELL, No.

The WITNESS. I had finished my answer.

Mr. LINDSTRAND. Then the objection was made.

Mr. Eggers. Yes.

Mr. HARRY YOCKEY. All right.

By Mr. CLARDY:

Q. Well, now, Witness, that we are on that subject, let me ask you this: is there any difference between the arrangement that you have entered into—or rather, that your company has entered into, with the Pere Marquette Railroad Company, and the arrangement that is involved here, as it has thus far been explained, in the testimony in this case?

A. As I understand it, there is not any difference at all; no, sir. I understand that the equipment that The Willett Company will put into this service is exactly the same type, some smaller, and some larger, as the equipment that we use in-

our operations; and any further service, as I stated before, between any of the points that we are serving at the present time, would certainly divert some of the traffic at least, and would mean a curtailment of our service.

Q. Well, now-

Mr. HARRY YOCKEY. Now, just a moment. If the Joint Board please, I want to move that that latter portion of the answer, with respect to a possible diversion of traffic, be stricken from the record. That is not involved here.

Mr. CLARDY. Well, if it is not, your Honor, then this is a mighty

mny case. That is all I can say:

Mr. HARRY YOCKEY. The theory of our case is, that we want to ake the freight of The Pennsylvania Railroad, and haul it on our tacks.

Mr. Barkell. Well, now, counsel, we are not going to get back not the argument that we had down in Indianapolis at the first earing in this proceeding, as to whether or not it is necessary a show public convenience and necessity in this case.

Mr. HARRY YOCKEY, No. your Honor; I do not mean that. I

o not want to get into that. .

Mr. BARKELL. We are not going back to that again. We have een all through that.

Mr. CLARDY. We will argue that after we get through here. .

Mr. BARKELL. Yes.

Mr. HARRY YOCKEY. Well, I want the record to show, if the Joint Board please, that I am objecting to that paricular portion of the answer.

Mr. CLARDY. Well, the question has been answered by the wit-

ess, so I will ask another.

By Mr. CLARDY:

Q. Witness, do the negotiations which you are presently carrying on with the other carriers with regard to the pooling of traffic, and the curtailing of operating schedules, which you have decribed with regard to the Grand Rapids-Muskegon operation, lso obtain with regard to the other routes over which you are perating and furnishing a local service at the present time?

A. Yes, sir; that is correct. They apply to points between hand Rapids and Big Rapids—which is one of the points inluded in this application. We plan to turn our traffic over to nother company to all of those points between Grand Rapids

nd Big Rapids.

Q. And is that for the same reason-

A. The principal reason-

Q. Namely, that the traffic is too light to warrant the continued peration under the changed circumstances?

A. That is the principal reason; yes, sir; and also because of the ircuitous mileage between Grand Rapids and Cadillac, Michigan.

Q. Bringing in the element of tire saving?

64 A. Yes.

Q. All right. Now, Witness, is the proposal which you are presently working on with these other carriers, bottomed on some general canvass by you and the other carriers, as to the total amount of tonnage that will be moving to and from these various points?

A. Yes, sir; that is correct. We made a very careful survey of the tonnage that we have handled between these points, for the period of—well, covering quite a lengthy period of time, and we have developed from that information taken from our manifest billing sheets, that we have got to do something about it; either cut the service down to one or two days per week; or secure tonnage from some other line; or, where they happen to be light; turn the traffic over to them, so they can load 100 per cent out-bound and 75 per cent back.

Q. Now, Witness, in your canvass of the situation, you made some investigation, I take it, to see what the total amount of tonnage might be moving into and out of all of these towns, handled by all of the different carriers, so as to have some firm foundation upon which to decide which way to handle the business; that is, as to whether you would take it, or whether somebody else would take

it.

A. Well, we have not developed that information from all of the carriers; no, sir; but we have with the few that we have been dealing with; yes, sir. I presume that the situation is the same with the others, as it is with the few that we have been trying to work out this plan with.

•Q. In making your surveys and checks covering the towns on the routes here involved, what did you find with respect to whether or not the present tonnage that you are handling is greater or less

than, or the same as, as it has been in the past?

A. Well, the tonnage is much less to these small intermediate towns, than it formerly was, because they have been affected by the freezing orders that have gone into effect on the various commodities, such as refrigerators, electrical appliances, washing machines, and so forth, and so on; and those little towns as yet have not been fortunate enough to secure war contracts, or have any war plants erected in them—that is, most of them; so that the tonnage is much less at the present time than it was prior to the outbreak of the war.

Q. Do you know of any prospective increase in business at any of these small, intermediate points that we have been discussing here this morning?

A. There is nothing in sight, that I know of, at any of these

places we have mentioned; no, sir.

Q. Has the answer which you gave about the small out-bound movement from any of these points, been the situation over the past several years?

A. (No answer.)

966 Q. In other words, has it always been practically negligible, as far as the out-bound was concerned?

A. Oh, yes; that is correct. The picture in that regard has not

been changed at all during a number of years past.

Q. Now, Witness, we have been talking about the intermediate points here. What kind of service does your company render, for example, between Grand Rapids and Müskegon proper?

A. Well-

Q: I mean is that something in addition to this peddle run that serves the intermediate points in there?

A. Yes, sir; that is correct. That is in addition to the peddle run.

 Q. About how many schedules on through business do you run between those points?

A. Oh, there are three or four schedules daily between Grand Rapids and Muskegon—that was your question, was it not?

Q. Yes.

967

A. Yes, sir; there are several daily schedules there.

Q. And what about your operations south out of Grand Rapids? Do you have some through schedules there?

A. Yes, sir; we have through schedules from Grand Rapids to Kalamazoo: through schedules from Grand Rapids to Holland, Michigan; and through schedules daily from Grand Rapids to Benton Harbor and St. Joseph; and from Grand Rapids to Chicago:

Mr. Eggers. Right there, Mr. Clardy; why not restrict

yourself to applicant's exhibit. No. 2?

Mr. Clardy. Because, your Honor, some of these operations will be over routes that are involved here.

By Mr. CLARDY:

Q. In connection with operations north, Witness, do you have some through schedules running north?

A. Yes, sir; we do. We have daily through schedules from

Grand Rapids to Manistee and Cadillac, Michigan.

Q. Now, you gave us, I believe, an idea of the total amount of equipment that your company has in operation at the present time.

A. Yes.

Q. But I do not think you told us as to whether the amount of percentage of the total percentage in operation on your line is the same as it has been prior to the outbreak of the war.,

· A. (No answer.)

Q. Would you tell us what the fact is with regard to that?

A. Well, if I understand your question right, we have the same number of pieces of equipment that we had before; yes, sir; but there are not as many of them operating at this time,

Q. Yes; that is what I meant. About what percentage of the equipment is idle, if you can tell us, as of today?

A. Oh, I would say approximately 20 per cent.

Q. 20 per cent.

A. Yes, sir.

Q. And as to the balance, that is operating, is it loaded to the same per cent of capacity now as it was prior to the out968- break of the war?

· A Well, that is what we are attempting to do right now;

yes, sir; but prior to today it has not been; I can say that.

Q. Well, will that situation, if it should continue, result in a further curtailment of the total number of units which you will operate over your system?

A. Why, yes, sir; it will, because where we may have used two pieces of equipment before, now we will probably be able to use

one, to load all of the freight on one piece of equipment.

Q. Now, at the first hearing in this proceeding, Witness, at Indianapolis, there was some considerable testimony introduced by a couple of the witnesses on behalf of applicant about how they would handle the freight across the dock at Fort Wayne, Indiana.

A. Yes.

Q. You were present at that hearing, I believe you said—were you not?

A. Yes.

Q. And you heard that testimony, did you? .

A. Yes.

Q. All right. Now, assuming for the purpose of my next question, that the freight moves into Fort Wayne, Indiana, by train, and then is transferred to a truck for movement to a point intermediate between Fort Wayne and the other key point to the north.

As I heard the testimony, it appeared that they gave some indication that they were going to save about 24 hours at that point in the actual handling of the freight from car to truck. In other words, their testimony was that the saving would all take place right there at Fort Wayne. Now, assuming that, instead of Fort Wayne, it is going to be Grand Rapids—which is the other key point—for the purpose of my question. If they will handle the freight over their dock at Grand Rapids in the same manner that they say they will handle it at Fort Wayne, is there any reason why your line could not make its trucks available in the same way-that they propose, with the same saving in time—if there is such a thing

A. Well, now, I don't believe that it makes any difference at all, whether the freight moves in a freight car—a boxcar, or whether it moves on a licensed piece of equipment by motor carrier. When it reaches the dock, the same physical handling must be done.

Q. Well, now, Witness, you have not answered that particular question. My question was, assuming that there is going to be the same handling in the same way, at Grand Rapids, and assuming further that there will be the same claimed saving of time at Grand Rapids, when it goes across the railroad dock, do you know of any reason why your company could not spot the trucks, and effectuate precisely the same saving to the railroad, that they have outlined and claimed would result if they use the trucks of

The Willett Company?

70 A. Oh! I understand your question now. I misunderstood you before. No, sir; I cannot see any reason why

we could not operate exactly the same way ...

Q. All right. Now, I will ask you the other question, Witness, which you answered before I asked it, and so, for the record. I will ask it now. You have heard the applicant's testimony. Is there in your judgment any possibility of a saving, based just upon what the applicant's witnesses have testified to in the record thus far?

Mr. HARRY YOCKEY. Just a moment. I object to the question, if the Joint Board please, as calling for an opinion and conclusion on the part of the witness, which he is not qualified to give.

Mr. BARKELL. I must say, Mr. Clardy, I do not believe I under-

stand your question myself.

Mr. CLARDY. Well, perhaps I am a little bit deep there, your Honor. The witness really answered the question before I asked it, but for the sake of the record, I would like to ask this question, as to whether the actual saving in time would accrue, as claimed, with the factors exactly as they have thus far explained them. I want this witness to tell us why, out of his experience as a transportation man, that saving which is claimed is nothing more than a figment of the imagination, and would not, as a matter of

fact, take place. That certainly is in issue here, and it is 971 certainly competent to have this witness testify to it.

A. Well, the answer is: no.

By Mr. CLARDY:

Q. Why?

A. Well, in the first place-

Mr. Eggers. Well, now, just a moment, Mr. Clardy. Do I understand, now, that this witness is going to attempt to refute the testimony which has been introduced by the applicant here, that they are going to save between 24 and 48 hours?

Mr. CLARDY. Definitely.

Mr. Eccens. That is the purpose of your question, is it?

Mr. CLARDY. Yes, your Honor—right head-on with their contention that there will be a saving, we are going to try to show you that there will not be.

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Mr. Harry Yockey. I am objecting to the question, if your Honors please, for the reason that this witness has not been qualified here as knowing or understanding anything about the operation of the railroad. The evidence in this case regarding the saving of 24 hours' time at Fort Wayne, is that these freight trains come into Fort Wayne, and as the operation is handled at the present time by the railroad—not by truck, but by the railroad—when those cars come in, the less-than-carload cars are taken into the yard, first, into the classification yard, and then they go into the freight house, and it takes 24 hours in that opera-

tion to get that less-than-carload freight out of the boxcars in which it comes in, and into the boxcars that go out north.

Now, that is a railroad problem in which the trucks are not involved.

Mr. BARKELL. That is the way I also understand the testimony that was given in Indianapolis.

Mr. CLARDY. Which way?

Mr. BARKELL. That is, that it is a matter of railroad operation only, and not involving physical transfer from rail to truck.

Mr. CLARDY. Well, then, your Honor has a faulty understanding of what the witnesses for the applicant have really said, and what we are attempting to refute; because this man—and I see now that I should have asked him another question, which I overlooked—has had railroad experience, and some 18 years or more in all of transportation experience; and he knows the manner in which freight is handled; he knows the manner in which it can be handled; and I want him to delineate at some length the reasons why the saving which is claimed here in time, is surely a figment of the imagination. I can demonstrate it, and if I have not done so when I have gotten through with this witness, your. Honor may strike it from the record.

Mr. Barkell. All right. Proceed.

Mr. CLAEDY. I will ask the witness a preliminary question, your Honor. I will withdraw the other question for the moment.

Mr. BARKELL. All right.

973 By Mr. CLARDY:

Q. Now, Witness, would you give us some outline of your

past transportation experience.

Mr. Lindstrand. Just/a moment. I object to that, if the Joint-Board and the Commission please, for the reason that this witness by his own testimony, has worked for Associated Truck Lines since 1938, and he cannot know what the railroad situation has been, or what the railroad problems have been, during the last four years, at least; and that is what we are contending with

w, and what we are putting into this record before this joint and.

Mr. Clardy. The trouble with the railroads, of course, your oner, is that they have not changed any over all of the years, at the point that I want to make is, that the manner in which freight will be handled, for the purpose of my question, is actly the same as the railroad claims it will be handled. In her words, we are not changing that at all, for the purpose of is testimony.

Mr. HARRY YOCKEY. I have no objection to your testifying how u would handle it, if you were handling it, the moment The masylvania Railroad turned the business over to the truck e-whether it be The Willett Company or some other carrier.

Mr. BARKELL, Off the record.

(Discussion outside the record.)

Mr. BARKELL. Back on the record. We will take the testimony of the witness for what it may be worth.

Mr. CLARDY. All right, your Honor. It may not be worth anything, of course.

Mr. BARKELL. Proceed.

Mr. CLARDY. But I think it will be worth something, because mow what the answer is.

By Mr. CLARDY:

Q. Now, do you recall my question, Witness?

A. No.

Mr. CLARDY. Will you read it, please.

(Question read.)

A. I spent about seven and a half years with the Michigan ntral Railroad Company. Following that, I was connected the The Detroit United Railways, the name of which was later anged to Eastern Michigan Railways, for around 10 years. At it time they were conducting operations over rail tracks. Since at time the company was sold, partly to Associated Truck Lines, the which I am connected at the present time.

By Mr. CLARDY:

Q. And you have been in the trucking industry ever since,

A. Yes, sir.

Q. And that has been—

A. Since about 1921, I would say.

Q. Very well.

Mr. Eggers. Mr. Clardy, I wonder if you would ask the witness at his capacity was with the various railroad companies by ich he was employed.

375 Mr. CLARDY. Oh, yes.

Mr. Eggers. If you will do that.

By Mr. CLARDY:

Q. Suppose you tell us that, Witness. I would like to have that in the record myself.

A. My capacity? -

Q. Yes.

A. Well, of course, I worked in the freight house for the Michigan Central Railroad; I worked in the freight house, and in the traffic department at Detroit, of the Detroit United Railways; and

I was traffic manager for the trucking company.

Q. All right. Now, you have heard what has already been said here; you have heard all of the description of the physical manner in which The Pennsylvania Railroad actually switches its cars and handles its less than truckload traffic at its various stations. particularly Fort Wayne, have you not?

A. Yes.

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Q. Now, was that method of handling, as they have described it here, any different from the methods that were used at the time that you were actively in the service of the railroads which you have mentioned?

A. No, sir, it was not. The physical handling was the same at that time as it is at the present time, except as to the point concerning which their witnesses testified, where apparently the

freight was going to be taken right out of the boxcar, and loaded directly onto the truck for deliveries along this route. That cannot be done. In other words, the first shipment

might be for the first point, but if it was transferred that way it would be up in the front end of the truck, and a shipment that might be for the next point would be in the middle of the truck; and the driver of that piece of equipment just could not possibly handle the freight in that manner. In other words, it would have to be floored in the freight house to begin with, and loaded into the vehicle in station order, as we call it, in order to permit any definite saving in time to be accomplished.

Q. Now. Witness, your answer so far is in relation to the manner in which the traffic was moved by truck, that came in, in just a

single railroad car; is that correct?

A. Yes.

Q: From which it is proved into the truck.

A. Yes.

Q. But would the situation be any further complicated if the freight was brought into Fort Wayne in a number of cars!

A. Oh; yes.

Q. From a number of different points, arriving at different times from those different points, in a number of different trains.

A. Oh, yes, sir, it would be complicated just that many more times, or just that much more, because they might have freight for the same points in each car that comes in, perhaps half a dozen cars.

Q. Well, then, Witness, would it be possible to directly 977 move less than carload traffic from a freight car into a truck, under any circumstances other than it might happen to be unloaded and loaded exactly in the station order that it was going to be delivered in, when the truck proceeded out along the highway.

A. Well, I'can answer that question this way, that if the company did not operate in that manner, loading it in station order, then these schedules that have been set up here would not mean

anything, not a thing.

Q. Well, now, Witness, they have not indicated much other than about one train—that is, they have only mentioned one train into Fort Wayne, as the record shows; but for the purpose of my question let us assume that there is going to be a number of trains over a period of 24 hours—

Mr. HARRY YOCKEY. Objection.

By Mr. CLARDY:

Q. Coming into Fort Wayne.

Mr. HARRY YOCKEY. Now, just a moment. I object to these remarks of Mr. Clardy, if the Joint Board please. They are more of an argument than they are a question, and furthermore, that is not a fact, that only one train into Fort Wayne was mentioned.

Mr. BARKELL. Well, of course, the record will have to speak for

itself on that.

Mr. CLARDY. Your witness, in his direct examination, only mentioned one train, and when I tried to find out on cross-examination from him about the schedule of others, he could not give it to me.

Mr. Eggers. For the purpose of his question, counsel is assuming that.

Mr. CLARDY. Yes.

Mr. Eccers. And you may assume other than that.

Mr. CLARDY. Yes. I discussed that matter at considerable length with your witness on any cross-examination, and I am very sure the record will show that his testimony involved one train.

Mr. BARKELL. Well, let us proceed.

By Mr. CLARDY:

Q. Now, Witness, for the purpose of this question, we are going to assume that there are a number of trains coming into Fort

Wayne, with less than truckload merchandise in several of the cars in each one of those trains.

A. All right.

Mr. LINDSTRAND. Less than carload, you mean.

Mr. CLARDY. How!

Mr. Lindstrand. You mean less than carload freight, not less than truckload freight.

Mr. CLARDY, Yes.

Mr. LINDSTRAND. You said, less than truckload,

Mr. CLARDY. I am speaking of less than carload merchandise, destined to the intermediate points along the route.

Mr. LINDSTRAND. All right

By Mr. CLARDY:

Q. Now, Witness, do you know of any manner in which 974 those various cars can be worked, and the freight transferred to the waiting trucks, without first working all of the cars, and sorting all of the freight out into proper station order, so that the last shipment to be delivered will be loaded into the truck first? If you know of any other way, I will ask you to describe it.

A. Well, there would be only one other way to accomplish that, and that would be to put on a truck for each car, a separate truck

for each car.

Q. And regardless of the tonnage, attempt to operate a separate unit for each car that arrived?

A. Yes, sir; but of course that would not eliminate the handling and flooring of the freight in order to get it into proper station order on each truck, either.

Q. Now, Witness, assuming further, for the purpose of my question, that they are going to attempt to have 100 percent loading out-bound from Fort Wayne. Would that further complicate the problem, unless they handled it exactly in the manner in which you

have described!

A. Well, from my experience, I do not believe that they would have sufficient tonnage to load their trucks 100 percent out bound. I am referring again, now, to the tonnage that is being turned over to us by the Pere Marquette Railroad Company, for delivery at these small towns. That has led me to believe that they would not have sufficient tonnage to load their trucks 100 percent out-

bound, anymore then we would have.

that that answer be stricken from the record as not being competent evidence. The answer was not responsive to the question, but I have no right to object to it on that ground. However, I do have the right to, and I do, object to it on the ground that it is not competent evidence. This witness has not been made com-

etent to testify as to what the traffic of The Pennsylvania Railroad

Mr. CLARDY. The witness has been qualified, your Honor, by howing us the amount of traffic which moves to and from these

mall towns. On the basis of that, I submit, he can testify.

Mr. Eggers. But does the witness, Mr. Clardy, know anything bout these towns north of Fort Wayne, Indiana? I think, your

mestion and the answer, were rather broad, there.

Mr. Claror. I am quite agreeable, your Honor, that the answer of confined only to those towns that he serves,—obviously.

Mr. EGGERS. All right.
Mr. CLARDY. I did not mean to apply it to the southern part of

he railroad, because he would not have knowledge there.

Mr. Eggers. All right.

Mr. HARRY YOCKEY. What is the ruling, your Honor?

Mr. BARKELL. The objection will be overruled. You may proceed.

By Mr. CLARDY:

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Q. Now, then, Witness, so that we will get into the record the positive side of the picture: in running the affairs of your trucking company, just how do you handle freight that is brought in to you

by a connecting line, or by a piece of equipment coming in from mother line, on your own system? How do you physically handle

hat freight across the dock?

A. (No answer.)

Q. Do you understand what I am trying to get at?

A. Well, I believe I do; yes, sir, but I am just thinking of several different situations there. I do not know just exactly how to answer that question.

Q. My question, Witness, assumes that you are preparing, let us say, at Grand Rapids for a run between Grand Rapids and Musketon, Michigan. You are preparing that truck, getting ready to

oad it. Now, how do you physically handle the incoming freight, which is going to be moved on that truck?

A. Well, that piece of equipment would be spotted at the dock, the same as a freight car would be, and the freight is taken off of that truck and placed on the floor of the warehouse until the truck was entirely unloaded. Then, we could tell from the manifest where the different shipments were going, what was going to the

determined, then the freight would be handled again, and leaded into the truck in proper station order, with the freight for the furthermost point loaded in first; and then the truck would start from Grand Rapids and peddle to the small

points in between there and Muskegon.

Q. And is the freight for the furthermost point always loaded into the truck first?

A. Yes.

Q. So as to save time in unloading?

A. Yes, sir, it is, because those trucks are not very large, and there is no provision for space for the driver to work around in; and furthermore, there might be some very heavy pieces of freight, and he could not lift them, and put them on the other side of the truck every time he stopped.

Mr. BARKELL. Off the record a moment

(Discussion outside the record.)

Mr. BARKELL. Now, back on the record. Pardon the interruption, Mr. Clardy.

Mr. CLARDY. Yes, sir.

By Mr. CLARDY:

Q. Now, Witness you have testified that your company has made a similar arrangement with the Pere Marquette Railroad Company.

A. Yes.

Q. If the railroad company which is involved in this case, namely, The Pennsylvania Railroad, should ask your company to perform the service proposed in this application over that ps3 part of the routes which your company serves, would it

take on that additional business?

A. Yes, sir; we certainly would, and we would be very glad to do so. We would be very glad to sit down with representatives of The Pennsylvania Railroad Company, and endeavor to work out schedules for service to the towns that we handle—or that we serve.

Mr. CLARDY. That is all with the witness on direct.

Mr. BARKELL. Cross-examine.

Mr. HARRY YOCKEY. We have no questions.

Mr. BARKELL No cross?

Mr. HARRY YOCKEY. No. sir.

Mr. CLARDY. Thank you.

Mr. BARKELL. Just a moment, please.

Mr. Ecores. There are a few questions that I want to ask you. Mr. Witness.

The WITNESS Yes, sir.

By Mr. EGGERS:

Q. Now, in the first place, you say that you would be willing to sit down with representatives of The Pennsylvania Railroad Company—

A. We would.

· Q. And endeavor to work out a schedule whereby you could handle this freight which they are now proposing to give to The Willett Company.

A. Yes, sir!

984 Q. Would your company be willing to handle that freight on the same schedules as are set out in applicant's Exhibit No. 4 here?

A. Yes, sir; we certainly would, if there was sufficient freight there to operate those trucks.

Q. Well--

A. That is, under the present orders that we have got to operate under.

Q. Well, would you then change your present schedule, or would you continue to run that—would you run this schedule in addition to your present schedule?

A. That would be in addition.

Q. In addition?

A. Why, yes, sir. If there was sufficient freight there, it would naturally be in addition. There would probably be enough freight there to put on two runs. If there is going to be enough for The Willett Company, I think I would be safe in assuming that there surely would be enough for another run for us.

Q. Weil, now, you also testified that the schedule as set forth in applicant's Exhibit No. 4 here did not meet the requirements and needs of the shipping public. Now, then, with that in mind,

would you still conform to that schedule?

A. Well, the schedule does not save any time. I do not say that it cannot be used, but the schedule as set up here would mean a

delay of 24 hours in the delivery time. In other words, what I mean to say is, that the schedule is all right if it is satis-

factory to the shippers, if they do not care about that delay of 24 hours. We would not be able to operate that way, however, because the shipping public demands that the freight move the same day that we pick it up, and we attempt to work out our schedules along that line, accordingly. Take the schedule here leaving Kalamazoo at 11 o'clock in the morning, and the freight is not there, it is not ready, unless it happens to be gotten ready to move the day before.

Q: Well, then, if the schedule that is set up here is not so very good, as far as meeting the shipping public is concerned; that is meeting the needs of the shipping public in your opinion, is it true that you would have in addition to run your present

schedule, regardless of the volume of the freight?

A. Well, we wouldn't be able to operate under this schedule—if I understand your question right—and at the same time continue to compete with other trucking competition.

- Q. So that you would have to run both, then?
- A. Yes.
- Q. Both schedules ..
- A. Yes.
- Q. Regardless of the volume.
- A. I believe we would; yes, sir.
- Q. All right.

A. In other words, if the railroad company, The Penn-986 sylvania Railroad, demanded that this schedule be operated to meet their own trains, their own train schedule, why, then we would have to do it; yes, sir; we would have to operate it.

Q. All right. Now, I am just interested in one further point, I believe. Do I correctly understand that your only objection—or rather, the only reason why you believe that the applicant here cannot save The Pennsylvania Railroad from 24 to 48 hours, that they are setting up here in this proposed operation, is due to the fact that they could not put the first freight out of the car, right into the truck, as you have described it here?

A. Well-

Q. Is that the only reason?

A. If they loaded it that way—I tried to make myself clear before, but perhaps I didn't quite do so. If they do not load the freight in station order, they cannot possibly maintain these schedules. In other words, they only allow three hours and ten minutes, if I recall it correctly, between Grand Rapids and Kalamazoo.

Q. Well, then, I have only this one further question, Mr. Witness: if they would load the freight in station order, then are you of the opinion that they would save the time that they claim they would save?

A. No.

Q. Or what is your opinion on that?

A. No, sir; the time would not be saved that way, and it could not be. If they loaded in station order, they

would have to handle it exactly the same as we do. They wouldn't save any time, because they would be handling it the same as we would handle it,

Q. In other words, then, that 24 to 48 hours would be lost-

A. Right.

Q. In arranging it in that order.

A. That is right.

Q. Is that the idea?

A. Yes.

Mr. Eccess. All right. I believe those are all the questions. I have.

Mr. BARKELL. Is there anything further with this witness?
Mr. CLARDY. May I point out, your Honor, that you omitted in your questions one element that I brought in.

Mr. EGGERS. What was that?

Mr. CLARDY. That is, that the freight would not all come in on one train.

Mr. EGGERS. That is true.

Mr. CLARDY. There would be obviously more than one train, or there would not be anything to move

Mr. EGGERS. Well, I believe you developed that pretty thor-

oughly.

Mr. CLARDY. I endeavored to.

Mr. BARKELL. All right. Are there any further ques-

Mr. HARRY YOCKEY. Nothing further.

Mr. CLARDY. That is all, thank you.

Mr. BARKELL. If there are no further questions, the witness is excused.

(Witness excused.)

Mr. BARKELL. Call your next.

Mr. Des Roches. If your Honor please, may we have just a very short recess at this time?

Mr. BARKELL. Off the record. (Discussion outside the record.)

Mr. BARKELL. Back on the record.

Mr. HARRY YOCKEY. May I ask, Mr. Clardy, if we can have for the record the Interstate Commerce Commission certificate number, or numbers, of the company represented by the last witness who testified?

Mr. CLARDY. Oh, yes.

Mr. HARRY YOCKEY. So that we will have that information in the record.

Mr. BARKELL. I am sure Mr. Des Roches will be glad to furnish you that information.

Mr. CLARDY. Yes.

Mr. HARRY YOCKEY. You can just state it for the record. That is all I want.

Mr. CLARDY. Mr. Des Roches will give you that.

Mr. Barkell. I may say, Mr. Yockey, that just at this moment Mr. Des Roches is attending another hearing before the Commission here, and when he comes back, I am sure he will take care of that.

Mr. HARRY YOCKEY. You say, Mr. Des Roches is attending an-

other hearing?

Mr. BARKELL. Yes, he is, before this Commission; but he will not be detained very long.

Mr. HARRY YOCKEY. All right.

Mr. CLARDY. I am ready to go ahead and put Mr. McKay on, your Honor.

Mr. BARKELL. All right.

Mr. CLARDY. Mr. McKay.

DON R. McKAY was sworn and testified as follows:

Direct examination by Mr. CLARDY:

Q. Identify yourself, sir.

A. Don R. McKay.

Q. Your residence?

A. My headquarters are at Detroit.

Q. By what company are you employed?

A. Interstate Motor Freight System, Inc. Our home office is located in Grand Rapids, Michigan.

Q. What is your position?

A. Assistant to the general traffic manager.

990 Q. You are engaged—or rather, your company is engaged in operations in interstate commerce, under authority from the Interstate Commerce Commission; is it not?

A. Yes.

Q. Your docket number is what?

A. MC 35628.

By Mr. HARRY YOCKEY:

Q. MC 35628?

A. Yes, sir; which became final at midnight of May 29, 1942.

By Exam. BRYAN:

Q. Do you mean by that, Mr. McKay, that the report and order became final, or that a certificate was issued?

A. A certificate was issued.

Mr. CLARDY. That was an order of the division, your Honor, on exceptions. The order was issued the fore part of the month, and had the effective date of the 29th.

Mr. HARRY YOCKEY. Is there not a petition pending at the pres-

ent time by some eastern association?

Mr. CLARDY. It was filed by the Right Honorable John Norris about one day, I believe, before the 29th of May, and no action was taken thereon prior to the 29th by the Commission; so unless the proceedings are reopened, the order has now become final.

Mr. BARKELL. All right.

Mr. CLARDY. Mr. Reporter, protestants' Exhibit No. 20 for identification, please.

(Protestants' Exhibit No. 20, Witness McKay, marked for identification.)

991 By Mr. CLARDY:

Q. Now, Witness, I show you this document, that has been marked by the Reporter as protestants' exhibit No. 20 for identification, and I will ask you if that is not one of the advertising maps and shippers' guides that your company is distributing at the present time!

A. Yes, sir; that is correct. We call this our shippers' guide

No. 15.

Q. And that document sets forth a partial list of the routes over which you operate, and the points over which you serve, does it not?

A. Yes.

Q. For the purpose of this proceeding, it delineates, I believe, the general outline of a route, or routes, between Fort Wayne, Indiana, on the south, and Petoskey and Traverse City, Michigan, on the north.

, A. Yes.

Q. Your company has rights, under the order of the Commission, just mentioned, to operate over the entire length of the routes represented—or embodied in this application, between Petoskey and Traverse City, Michigan, on the north, and Fort Wayne, Indiana, on the south; is that correct?

A. Yes, sir; that is right. We go up to Petoskey.

Q. And in addition thereto, you have the route requested here, between Grand Rapids and Muskegon; have you not?

A. Yes.

992. Q. I believe, however, Witness, that your company does not have the right to operate east from Cadillac over to Falmouth, and over through Lake City, and back to 131—or, am Lincorrect about that?

.A. Well; we do operate over this route here [indicating], but

we don't go over to Falmouth; no, sir.

Q. When you refer to "this route here," you are referring to what route, or to what points?

A. McBain-we make McBain out of Cadillac, and also Marion.

Q. But you do not operate into Falmouth?

A. No, sir.

Q. And in addition to the routes that are involved in this application, your company covers practically all of the important points in the state of Michigan, I believe; does it not?

A. I think we do; yes.

Q. And the routes that have been authorized to you by the recently issued order of the Interstate Commerce Commission cover in total, I believe, some 19 states and the District of Columbia; is that correct?

A. We have operating authority in 19 states; yes, fir.

Q. Now, Witness, with regard to the particular points that are embodied in this present application: starting at the south end, your company operates through schedules; does it not, between Fort Wayne, Indiana, and Grand Rapids, Michigan?

A. Yes, sir; that is correct. We operate through schedules, nonstop, and we also stop some of our trucks on the way through at South Bend, Indiana, and Kalamazoo,

Michigan, for drop-offs, as we call them.

Q. And do you also have a number of peddle runs covering the route north from Fort Wayne, Indiana, to Sturgis, Michigan, and from Sturgis to Kalamazoo, and from Kalamazoo to Grand Rapids?

A. Yes:

Q. In serving the intermediate points in the case of less-than-truckload merchandise, is it the plan of operation of your company to serve those points; that is, the intermediate towns, by these so-called peddler schedule runs?

A. Yes, sir. That is the way we operate.

Q. But in connection with truckload business moving into any of these intermediate points, you operate directly to the towns themselves, do you not?

A. Yes, sir; directly to the towns themselves, and then they call

the nearest terminal.

Q. Now, then, Witness, with regard to the amount of equipment which your company is operating at the present time, first, over its entire system, and next in the state of Michigan; will you tell us about that?

A. We are operating altogether approximately 2,600 outfits at the present time.

Q. And in the state of Michigan?

A. And in the state of Michigan approximately 300.

994. Q. Now, as to the operations which your company is carrying on at the present time, as compared with the operations it was carrying on a year ago: has there been any decrease in the total volume?

A. Yes, sir; there has been. Our less-than-truckload tonnage

has dropped off approximately 20 per cent.

Q. And has that decrease in volume resulted in your having idle equipment in an increasing amount?

A. Yes, sir; I would say that it has. We do have some idle

equipment right now.

Q. Well, in the state of Michigan, for instance, at the present time about how much equipment would you say is idle, and available for additional business, if such should be offered to you?

A. Last night at seven o'clock, we had 50 bottoms idle in the state of Michigan.

• Q. Now, you have been present here, and have heard the general outline of the kind of service that is proposed in this application, is that correct?

A. Yes.

Q. I will ask you, Witness, if at the present time your company is conducting any similar operations for others?

A. Yes, sir, we are; and we started that operation on the 25th

of May, just this last May.

Q. For whom?

A. The Pere Marquette Railroad Company.

By Mr. HARRY YOCKEY:

Q. That is, May of this year, did you say?

A. Yes, sir.

Mr. CLARDY, 1942.

The Witness. Yes, sir; under ODT order No. 1.

By Mr. CLARDY:

Q. Now, in the carrying on of these operations to which you have just referred, Witness, what points or over what routes, will you be called upon to serve?

A. At the present time we are spotting trucks at Greenville, Michigan, and peddling up route 66, up as far as Lakeview, and

then over route 46 to 131.

Q. And in the carrying on of those operations, are you paralleling the lines of the Pere Marquette Railroad between the general points which you have just named?

A. Yes.

Q. Are you in the carrying on of those operations handling the freight from station to station—

A. Yes.

Q. Exactly as outlined in the instant case?

A. Yes, sir.

Q. By the way, Witness, are some, at least, of the stations you are serving, stations where there are no station agents on duty at the time that you reach those particular stations?

A. Yes, sir; that is true. A lot of them are closed, although I do not know exactly which ones those are just offhand

here; and they are making arrangements to leave the key at a gas station, or give us a duplicate key to carry with us—that is, that the driver can carry with him—because that same driver makes that run every day.

By Mr. EGGERS:

- Q. A key to the freight house, do you mean?
- A. Pardon me?

Q. When you refer to giving you a duplicate key, do you mean a key to the freight house?

A. Yes. sir.

Mr. EGGERS. All right.

By Mr. CLARDY:

. Q. Now, Witness, you were present here when Mr. Duncan, the: witness who preceded you, was on the stand, were you not?

A. Yes.

Q. And you heard his testimony, did you?

Q. And did you also hear the testimony of the representative of one of the other carriers—I have forgotten at the moment, now, just which one it was—with regard to the fact that they also have such arrangements with the Pere Marquette Railroad?

A. Yes, sir.

Q. Do you know whether or not the Pere Marquette Railroad has made general arrangements with a number of other carriers, so that it has at the present time pretty well duplicated all of the operations embodied in this application?

A. Yes, sir, There was a meeting called in Detroit, and also one in Grand Rapids, to which there were invited a number of carriers that cover the state of Michigan, and arrangements have been set up similar to the arrangements that we have, covering parallel routes with their operations, so that they can p conform with ODT order No. 1.

Q. Very well. Now, I. believe that under your direction you caused certain employees of your company to make some surveys of traffic, business and operating conditions all up and down the routes involved in this application; is that correct?

A. Yes.

Q. Would you give us for the record, please, the identity of

those persons whom you had make that survey?

A. Mr. Piper, our manager at Kalamazoo, got the figures together from Kalamazoo to Sturgis; and Mr. Orth, our agent at Grand Rapids, worked on the route from Grand Rapids to Cadillac—that is, route 131.

Q. And have you both of the gentlemen named present here at this time?

A: Yes.

Q. To testify with respect to the details of that investigation? A. Yes.

Q. Now, Witness, with regard to the over-all picture, about which they will later testify in some detail, can you tell me this first: with respect to operations particularly between Grand 998 Rapids, Michigan, and Fort Wayne, Indiana, is your company presently handling sufficient business, or receiving sufficient business, to enable it to operate to and from the intermediate points on that part of its routes, with its equipment loaded to anywhere near capacity?

A. We are operating full loads daily between those points.

Q. Between what points?

A. Between-

Q. Between the terminal points?

A. Between Fort Wayne and Grand Rapids.

Q. Well, now, Witness, my question had to do with the intermediate points, between those points.

A. Well, under this new ODT order No. 3, we will have drop-

offs at those intermediate points.

Q. Well, now, just what do you mean by that, for the record? Mr. BARKELL. Yes, what do you mean when you speak of drop-

offs at the intermediate points?

A. Well, if we had a truckload of freight with a shipment in it that was consigned to Kalamazoo, of 5,000 pounds, we would load that 5,000-pound shipment on the rear end of the truck, and we would stop the truck at Kalamazoo, and drop off that particular 5,000-pound shipment there at Kalamazoo, and then we would pick up another 5,000 pounds from Kalamazoo consigned to Grand Rapids; and go on through.

By Mr. CLARDY:

999 Q. Well, now, Witness, I see you misunderstood my.

A. I am sorry.

Q. I am inquiring particularly now with regard to the small intermediate points.

A. Oh.

Q. And I will confine the question to those points that are on your route between Grand Rapids and Kalamazoo. Now, my question is as to the amount of tonnage that you are moving on your peddler run to those towns, as to whether or not that tonnage is sufficient in volume to give you a full truckload, or only a fractional part of a truckload.

A: During the last 10 days/it has averaged approximately 8,000 or 9,000 pounds on the peddler run from Grand Rapids to Kalama-

200.

Q. Including freight destined to Kalamazoo?

A. Yes.

Q. And about how much of that freight would you say was involved to and from the intermediate points—or rather, to the intermediate points, if you can give us that?

A. On that route 131 down there, we would probably have approximately 3,000 pounds to deliver at those small intermediate towns.

Q. Has your company, because of that situation, been negotiating with other companies operating over that route, looking toward a consolidation of its tonnage with that of other carriers operating there?

1000 A. That is what we are going to have to do, yes, sir; in

order to conform with ODT order No. 3.

· Q. And those negotiations are being carried on at the present

time, are they?

A. Yes, sir; that is correct; and as a result of that, I think that we will have to probably get rid of 150 peddler vehicles that we now have.

Q. Over the entire system?

A. Yes.

Q. That is, for the reason that you have just outlined?

A. Yes.

Q. Now, Witness, is the same factual situation true with regard to the intermediate points on the other parts of this route that

we have just been discussing here!

A. Yes, sir; that is correct. From Grand Rapids to Cadillac we load the freight that is consigned to Traverse City and Petoskey, or any other points in the north, in the nose of the vehicle, and then we make the less-than-truckload deliveries on the way up; and when we get to Cadillac we have approximately 6,000 or 7,000 pounds of freight that we turn over at that point to the Parker Motor Freight, for delivery to Traverse City and Petoskey, or any other points that they might make, for which we have freight.

Q. And as to the intermediate points on that run, that you are now discussing, Witness, do you have about the same amount

1001 of tonnage in the aggregate to those points, that you mentioned with respect to the route south of Grand Rapids?

A. About the same, yes.

Q. Now, with regard to movements between Grand Rapids and Muskegon, Michigan: do you serve the intermediate points on that part of the route with a peddler set-up also?

A. Yes, sir; we do-Grand Haven.

Q. Well, now, as to those intermediate points—excluding Grand Haven, because I do not believe Grand Haven is included in this application—although I want to be sure, however.

Mr. HARRY YOCKEY. It is not.

Mr. CLARDY. All right.

By Mr. Chardy:

Q. Excluding Grand Haven, then, Witness, about how much tonnage daily will be moving into those intermediate points?

A. Well, at the present time we are running a small pick-up

truck out there with about 4,000 pounds of freight on it.

Q. Is there any appreciable out-bound tonnage from any of the intermediate points south of Grand Rapids, between there and Fort Wayne, that you presently know of?

A. Not that we would not be able to handle with our own equip-

ment at the present time; no, sir.

Q. Perhaps my question was not clear. I mean, at the small, intermediate points is there any appreciable outbound tonnage?

A. Well-

1002 Q. When you qualify your answer that way, I wish you would explain, please, what you mean.

A. (No answer.)

Q. In other words, Witness, are there some points that do have

some out-bound tonnage! If so, will you mention them.

A. Well, there is one point there, that I can't recall the name of just at the moment, but Mr. Piper will testify concerning the amount of tonnage that is involved there.

Q. One out-bound movement?

A. Yes.

Q. From one town?

A. Yes, sir. I don't know whether that is on route 131, or not, just offhand. I don't recall.

Q. And as to the balance of them-

A. As to the balance of them, the movement out-bound would be very small. I would say that it would not run over 2,000 pounds a week.

Q. And is the same thing true with respect to the northern run

up to Petoskey, with the exception of Big Rapids?

A. Well, on our Grand Rapids-to-Cadillac operation, those are only points where we peddle freight intermediate. In other words, we give Parker, Motor Freight—

Mr. EGGERS. Is he answering your question?

Mr. BARKELL. I do not think the witness is answering your question, Mr. Clardy.

Mr. CLARDY. I see what he is getting at.

Mr. BARKELL. Can you be a little bit more specific?

Mr. CLARDY. I will ask him another question, so that we will understand.

By Mr. CLARDY:

Q. Witness, the points that you serve on the route north: are there any of them from which you get any appreciable out-bound volume of freight?

A. Above Cadillac!

Q. No; above Grand Rapids.

A. Up to Petoskey?

Q. Yes.

A. Oh, we get truckloads of fruit out of Traverse City

Q. Well, is Traverse City about the only point from which you get any appreciable amount of business out-bound?

A. Yes; that is all.

Q. And that is seasonal, is it?

A. Yes.

Q. Now, Witness, you started to say something about Parker Motor Freight, about your turning freight over to them. You did not finish your answer. What were you going to say?

A. Well; what I was going to say was this, that we only make peddle deliveries between Grand Rapids and Cadillac; and we do not have a sufficient volume of freight for us to go on north, so we turn all of that freight over to Parker Motor Freight,

and we have been doing that for some time, now .-

1004 Q. Because-

A. Under an interchange arrangement.

Q. Because the tonnage is so light.

A. That is right.

Q. Now, Witness, you have been present when we had our discussions with regard to the method of operation, and the schedules as proposed by the applicant here; is that correct?

A. Yes.

Q. Also you heard, particularly, the testimony of the last witness here. Mr. Duncan, the witness who preceded you, with respect to the manner in which freight would necessarily in his opinion have to be handled in order to efficiently furnish service—did you not?

A. I heard what he had to say; yes, sir.

Q. Is the description which Mr. Duncan gave of the physical manner in which trucks are loaded by transferring from one to another, typical of the way in which your company handles its business?

A. Yes, sir; that is correct; only we have such a large volume of business that it takes us longer than it would take him. Take, for instance, at Grand Rapids; we are running 120 trucks through there, and those trucks have to be pretty nearly all unloaded before they start out on those runs.

Q. If the railroad was operating with a considerable volume of business, with a lot of trains, what effect, if any, would that

have on the schedules that have been proposed in this case, the manner of operating, and the claimed saving of time?

Mr. HARRY YOCKEY. Just a moment. I object to the question, if the Joint Board please, for the same reason I gave a while ago; namely, that this witness is not a railroad man, and he has not, been qualified as knowing anything about railroad operations.

Mr. CLARDY. I can qualify the witness, of course, if there is any

question about it.

Mr. BARKELL. Suppose you do that.

By Mr. CLARDY:

Q. Suppose, then, Witness, so that there will not be any question about it, you identify volvself a little bit more in detail, and tell us what your transport. In background of experience is.

A. I worked for railroads for quite a long time.

Q. Tell us something about that.

A. I worked for the Grand Trunk for a number of years; I also worked for the Pere Marquette Railroad; and also for the Central Inspection & Weighing Bureau, that audits all of the tonnage records in the state of Michigan.

Q. How long have you worked for motor transportation com-

panies?

A. For about 10 years.

Q. Now, recurring again to my question, Witness: if The Pennsylvania Railroad freight was coming in on more than one train at any of the key points that have been mentioned here, what is your

judgment as to whether or not the proposed schedules could be adapted to the operation, and adhered to, and a saving

in time actually made?

A. My opinion would be that their operation would be much slower than ours, because they would have to move the cars to the ware louse, or to the freight house. They would not have the trucks available at the moment.

Q. You were here, were you not, Witness, when one of the preceding witnesses testified wit1. respect to a movement from Berne,.

Indiana?

A. I don't believe so.

Y. Were you in the hearing room at that particular moment?

A. I don't recall it right now, Mr. Clardy, and I don't believe I

Q. Is your company in a position to, and would it, enter into with The Pennsylvania Railroad, the same sort of an arrangement that it presently has with the Pere Marquette Railroad, for the handling of freight over the routes which it serves, that are here involved?

A. Very glad to.

Q. Have you as yet heard any detail of the proposed operation, that differs from the arrangement that your company presently has with the Pere Marquette Railroad?

A. No, sir: I haven't heard anything that appeared to be differ-

ent. It sounds about the same to me.

Q. Now, Witness, if The Pennsylvania Railroad should in-1007 sist on the use of the proposed schedules as set out in applicant's Exhibit No. 4 here, would your company conduct such operations in the manner that the railroad wanted?

A. It would be glad to.

Q. If the tonnage that the railroad is proposing to tender to The Willett Company is not sufficient to justify the running of trucks under the present outstanding governmental orders, would you be in any different position than they are with respect to whether you could or could not run?

A. Why, no, sir; not a particle. They would not be able to run

anymore than we would be able to run.

Q. And conversely, the same with yourself.

A. Yes.

Q. But assuming, new, Witness, that there is a sufficient volume of tonnage moving: your answer is that your company would operate such schedules; is that correct?

A. Yes, sir; that is correct. We would give them, in other words, any service that they would want, that was profitable—yes, sir.

Q. Now, is your present less than truckload tonnage over all of the routes here involved, down about the 20 per cent that you mentioned?

A. (No answer.)

Q. I think I asked you that question before only with respect to one particular operation. Does that apply to all of your 1008 operations?

A. Yes, sir; I would say so.

Q: They are down approximately 20 per cent?

A. 15 to 20 per cent.

Mr. CLARDY. That is all. Mr. BARKELL, Cross-examine.

Cross-examination by Mr. HARRY YOCKEY:

Q. Mr. McKay, do I correctly understand that your testimony is the same, or in substance the same, as the testimony of the witness who testified immediately before you—Mr. Duncan, I believe it was—namely, that the schedules that are set up here, asked for by The Pennsylvania Railroad—that is, those that are set up in applicant's Exhibit 4 in this proceeding—do not conform to any of the schedules that are maintained by your truck line at the present time, over any of these routes?

Mr. CLARDY. I did not ask the witness about that, but-

Mr. HARRY YOCKEY. Well, I am asking him about it right now.

Mr. CLARDY. I suggest that you let the witness look at applicant's Exhibit 4.

The WITNESS. Did you ask me that question, Mr. Clardy?

Mr. CLARDY. No; I did not, Witness. I did not ask you anything about it.

Mr. HARRY YOCKEY, No, but-

1009 Mr. BARKELL. Now, just a moment, gentlemen. Let Mr. Yockey proceed with his cross-examination.

Mr. Eggers. Are you objecting, Mr. Clardy?

Mr. CLARDY. That matter was not gone into by me with the witness on direct examination. However, I do not want to object to it. I am merely suggesting that the witness should be shown applicant's exhibit No. 4.

The WITNESS, Yes.

Mr. HARRY YOCKEY. That is all right.

Mr. CLARDY. Before he answers.

Mr. HARRY YOCKEY. Certainly. That is quite all right. If he wants to see it, by all means, let him look at it. I do not want to take any advantage of him.

Mr. CLARDY. Would you like to see that exhibit, Witness?

The WITNESS. Yes.

Mr. HARRY YOCKEY. Let him see it.

Mr. CLARDY. May we be off the record a moment, your Honor?

Mr. BARKELL. Off the record.

(Discussion outside the record.)
Mr. BARKELL. Back on the record. Proceed with the cross-examination.

By Mr. HARRY YOCKEY:

Q. In other words, Mr. McKay, the other witness testified that these schedules are not the schedules of the shipping public by truck, or what the shipping public by truck desires, and 1010 that they do not conform to any of the schedules of his own company.

A. Yes.

Q. And that in order to comply with this kind of schedules, to meet the railroad freight train schedules, it would be necessary to put on a different operation.

A. Yes.

Q. Would that be true of your company also?

A. Why, as I stated before, we would be very glad to enter into an arrangement with your empany, if the tonnage was sufficient, to operate over these routes.

Q. Well, now-

A. So that we would be able to conform to the ODT orders.

Q. I did not ask you anything about any ODT orders, Mr. Witness. My question was, and is: these schedules that are set up here are not the same schedules as your company maintains at the present time in its present operations, are they?

A. Oh, not right up to the minute : no, sir.

Q. How is that again?

A. Not right up to the minute; no.

Q. So that, then, in order to put in these particular schedules—or rather, if you did put in these particular schedules, they would be different from the ones that you now have; is that right?

A. Well, we would be glad to develop schedules for you.

Q. That still does not answer my question, Mr. Witness. I say, these schedules here are not the schedules which your company is maintaining at the present time, are they?

A. Not right exactly to the hour, or to the minute, as I stated before; no. sir.

Q. That is what I say.

A. No, they are not.

- Q. Well, now then, did I correctly understand you to say a moment ago that your company has 120 trucks coming into one of its terminals daily?
 - A. Yes.
 - Q. Which one?
 - A. Grand Rapids.
 - Q. By that do you mean-
 - A. We unload those trucks there.
- Q. And do you transfer your freight to these other lines, the peddle lines that operate out of there, as well as the freight for delivery at Grand Rapids?

A. The less-than-truckload is broken there-yes.

Q. And that takes a considerable amount of time; does it?

A. About six hours.

Q. It takes you only about six hours

A. Right.

Q. To make that distribution?

A. Yes, sir.

Q. Well, now are you acquainted in any manner with the operations of The Pennsylvania Railroad at Fort Wayne, Indiana?

1012 A. Well-

Q. That is, as to the number of trains that they have in there daily, for example?

A. No.

- Q. Or the number of cars that they have come in on each of the trains that come in there?
 - A. No, sir.

Q. Or are you acquainted with the system that they maintain at Fort Wayne at the present time, regarding the breaking up of their trains?

A. No.

Q. Or the transfer of the freight to the local peddler runs?

A. They would probably be the same-

Q. No. Just a moment, now, Mr. Witness. I am asking you if you know.

A. No.

Q. You do not?

A. No.

Q. You have no knowledge of that whatsoever?

A. Right.

Mr. HARRY YOCKEY, That is all.

Mr. BARKELL. Is that all?

Redirect examination by Mr CLARDY:

Q. Witness, were your schedules over these routes set up to meet the convenience of the shipping public along these 1013 routes?

A. That is what we set them up for, that is what the

schedules were set up for; yes, sir.

Q. You started to say something just now in response to a question that Mr. Yockey asked you, but you did not finish your answer. Our of your experience in the rail field—well, never mind that. Strike that out. You have heard a considerable amount of discussion here about the manner in which The Pennsylvania Railroad proposes to conduct this operation at the Fort Wayne end, have you not?

A. Yes.

Q. So that you do have some knowledge, at least, therefore, of what The Pennsylvania Railroad is proposing, as shown by the testimony that they have thus far produced, have you not?

A. Yes.

Q. Well, now, Witness, based on that, and based also on your own experience in the rail field, is there any difference in the way which they are going to shuffle their cars at the freight house, and the way in which other railroads, including the Pere Marquette Railroad, handle their traffic at the present time!

A. No, sir, I cannot see any. It looks to me as though they are. going to handle it in the same way as the Pere Marquette Railroad

in order to comply with the ODT orders.

Mr. CLARDY. That is all. 4

Mr. BARKELL. Are there any further questions?

1014 Mr. HARRY YOCKEY. Nothing further.

Mr. EGGERS. I believe I have just one question, Mr. Mc-Kay.

The WITNESS, Yes, sir.

By Mr. EGGERS:

Q. And that is this: does this arrangement which you say your company has in effect at the present time with the Pere Marquette Railroad Company, have in mind expediting the service of the railroad, or is it solely to take the waycars off the railroad; do you know?

A. Well, from our talks with Mr. Bowman, of the Pere Mar-

quette Railroad Company, I would say that it is for both.

Q. For both.

A. Yes.

Q. I see.

A. And I think that they are very well satisfied, if I may add this, with our service.

Q. Do you happen to know if that arrangement has speeded up the railroad service to any extent?

A. I think it has.

Q. Of course, you have not had very much of an opportunity

as yet to try it out, have you?

A. No, sir, we have not, but I have talked to the drivers, and we have got to be very careful about soliciting freight away from the Pere Marquette Railroad.

Mr. EGGERS: I am sorry. What was that last answer again,

please, Mr. Reporter?

1015 (Answer read.)

Mr. EGGERS. That is all I have.

Mr. LINDSTRAND. Just one question, please.

Re-cross-examination by Mr. LINDSTRAND:

Q. Mr. McKay, were you present at the hearing in Indianapolis?

A. In this case?

Q. Yes.

A. No.

Mr. LINDSTRAND. That is all.

Mr. BARKELL. Is that all, now?

Mr. CLARDY. Just one further question, your Honor.

Redirect examination by Mr. CLARDY:

Q. Witness, you have had a great many conferences with me, and with others, about what took place at the prior hearing of this case in Indianapolis, have you not?

A. Yes, sir; that is true. I sent Mr. Heath down there, when, I found out I was not going to be able to get down there myself.

Q. Yes. Heath was the one who came down there.

A. Yes. I sent him down.

Q. And you have had a rather full report of what took place at that hearing, have you not?

A. Yes.

Mr. CLARDY. That is all.

Mr. BARKELL. If there are no further questions, the witness is excused.

(Witness excused.)

Mr. BARKELL. Call your next.

Mr. CLARDY. Mr. Devlin.

FRANK C. DEVLIN was sworn and testified as follows:

Direct examination by Mr. CLARDY:

Q. Your name, Witness.

A. Frank C. Devlin.

Q. Where are you located?

A: Kalamazoo, Michigan.

Q. By whom are you employed?

A. Keeshin Motor Express Co., Inc.

Q. How much experience, if any, have you had in the transportation field?

A. 21 years.

Q. Will you just give the Board and the Commission the high spots of where you have worked, and the particular line of business.

A. Well, I was with the New York Central Railroad, and the Missouri Pacific Railroad at Chicago; then I spent four years as an industrial traffic manager; and I have been nine years with Keeshin Motor Express Co., at Chicago, Illinois, Fort Wayne, Indiana, Kalamazoo, Michigan, and Cleveland, Ohio.

Q. You have been located in the territory that is involved in this application, then, for approximately how many years?

A. Six years.

Q. Have you, in the course of your experience, been engaged in soliciting traffic—

A. Oh, yes.

Q. As well as directing operations?

A. Yes.

Q-And has your solicitation included contacts with the public at Fort Wayne and Kalamazoo!

A. Yes, sir.

Q. As well as at various other points up and down this proposed operation?

A. Yes.

Q. In and through those contacts, have you been able, pretty well, to get an over-all picture of the shipping requirements of the public up and down that line?

A. I think so.

Q. Now, your company is engaged at the present time in operations over what part, or parts, of this proposed extension?

A. Well, we parallel in our operation The Pennsylvania Railroad from Fort Wayne, Indiana, to Grand Rapids, Michigan:

Q. And is that under and by virtue of an application filed by your company with the Interstate Commerce Commission?

A. Yes, sir.

Q. What docket number.

1018 A: I have got that right here. Just a moment.

Q. Let us have it.

A. C-4731 and C-1920. I have got the I. C. C. numbers also, but not right here with me. I will have to get them a little later and give them to you, if you want them.

Q. The numbers that you have just recited cover your Michigan

authority; is that correct?

A. Yes.

Q. And you have a docket number assigned to you by the Interstate Commerce Commission, have you not?

A. Yes, sir.

Q. Or rather, two docket numbers; one under the name of Keeshin Motor Exress Co., Inc.—

A. Yes.

Q. And one under the name of Dickens,

A. Yes.

Q. Dickens Motor Freight.

A. Yes, sir. I might just say, that No. C-1920 covers the Dickens Motor Freight authority, and No. C-4731 covers the Keeshin Motor Express Co. authority.

Q. You will secure the I. C. C. numbers during recess and give

us those a little later, will you?

A. Yes.

Q. Very well. Now, Witness, does your company serve all of the points up and down this route between Grand Rapids,

1019 Michigan and Fort Wayne, Indiana?

A. We have a service available; yes, sir.

Q. At the present time, how are you handling it?

A. Well-

Q. In other words, do you have peddle runs, plus other operations, or is the business handled on just one combination, or low?

A. Well, we have principally a through operation out of Fort Wayne up into this territory. We have no peddle run excepting between Kalamazoo and Grand Rapids, Michigan.

Q. Does the amount of tonnage which is available have anything to do with the reason why you do not have a peddle run south of there?

A. Yes, sir; it certainly does. There is not sufficient tonnage available for even one line to operate over that route at the present time.

By Mr. EGGERS:

- Q. Let me ask you right there, Mr. Witness: do you solicit business along that route?
 - A. Between Kalamazoo and Fort Wayne?

Q. Yes.

· A: Yes, sir, we do; truckload business.

- Q. Do I correctly understand, then, that you are only interested in truckload business between those points?
- A: Well, no, sir; not just truckload business. We will accept any freight along that line, any and all freight.

By Mr. CLARDY:

Q. Has the experience of your company, however, 1620 and your own experience, over the past several years, disclosed anything to you about the total amount of less-than-truckload business that is or is not available along that route?

A. Yes, sir.

Q. And that is what?

A. Well, with the exception of Kendaliville, Sturgis, and Three Rivers, there is very little less-than-truckload tonnage available at any of the points.

Q. And is that also true with regard to the in-bound tonnage

to points other than those you have named?

A. Yes, sir; that is correct. It would be principally in-bound

tonnage at the smaller points.

- Q. Have you for has your company—been in conference with representatives of some of the other companies, with respect to some proposed diversion of traffic from one company to another, in order to make up maximum loads over this route?
 - A. Oh, we have been doing that since May 15th.

Q. With some other line?

A. Yes, sir.

Q. Since May 15th of this year?

A. Yes, sir.

- Q. Has some of the tonnage been diverted to you for certain points, and diverted from you to other carriers for certain other points?
 - A. Along this particular line, you mean?

1021 Q. Yes.

A. No, sir. We have diverted our formage to other lines along there—now, as I understand it, you are only speaking of these small towns.

Q. Yes.

A. You do not mean Grand Rapids.

Q. No.

A. Or Kalamazoo.

Q. No. I am only speaking of the intermediate points

A. All right. That is right.

Q. Now, Witness, how many units of equipment does your company maintain in operation over its system at the present time?

A. 1,800 tractors, trailers, and straight jobs.

Q. And about how many of those are devoted to Michigan operations—or, I should say, Michigan and Indiana operations.

A. About 150 of each.

Q. Tractors and trailers?

A. Yes.

Q. Does your company at the present time have any idle equipment!

A. Yes.

Q. Have the presently existing conditions, brought on by the war, affected you, so that you have additional, idle equipment available, as compared with this same time a year ago?

A. Yes, sir, that is the situation, and particularly in connection with the less-than-carload—or rather, I should say,

1022 less-than-truckload traffic.

Q. What do you mean by that?

A. Well, what I mean is, that our less than truckload traffic has dropped off possibly 25 per cent in the period of the last four to six months.

Q. Now, I believe that you testified that your line between Grand Rapids, Michigan, and Fort Wayne, Indiana, parallels the line of The Pennsylvania Railroad; is that correct?

A. Yes.

Q. If The Pennsylvania Railroad should offer to—or rather, should make you an offer of the same type as described in the instant application, is your company in a position to, and would it, enter into a proper agreement with that railroad company!

A. Why, we would be required to do so, yes, sir.

Q. Would you be willing to do so?

A. Yes.

Mr. EGGERS. If I may interrupt you right there, Mr. Clardy. Mr. CLARDY. Certainly.

By Mr. EGGERS:

Q. You do not serve north of Grand Rapids along this proposed route, do you, Mr. Witness?

A. We do not with our own equipment, no, sir.

By Mr. CLARDY:

Q. You could operate over that part of the system which is described in their exhibits, since they have broken it down into parts, all the way from Fort Wayne, Indiana, to Kala-

mazoo, Michigan, and from Kalamazoo to Grand Rapids;

is that correct ?

A. Yes.

Q. If, as they propose here, that is broken at Kalamazoo into two, separate operations, are you in a position to, and would you, make two, separate operations for them?

A. Yes, sir: we would—that is, if there was sufficient tonnage.

By Mr. HARRY YOCKEY:

· Q. What was that last answer?

A. If there was sufficient tonnage, I say.

By Mr. CLARDY:

Q. Well, Witness, that last answer of yours was bottomed on the ODT orders, I take it; is that correct?

A. Yes.

Q. All right. Now, Witness, you have some idea—I believe you were present at the original hearing, this case at Indianapolis. Am I right about that?

A. No, sir.

Q. Oh. You were not there?

A. No.

Q. Well, in any event, do you have some familiarity with the schedules as they have proposed them in their exhibit No. 4 here?

. A. No, sir; I am not familiar with them.

Q. You have not seen them?

A. No.

1024 Q. All right. In connection with your operations between Fort Wayne and Grand Rapids, what other lines are you competing with at the present time, if any, for this particular business?

A. Well, there is Interstate Motor Freight System, Norwalk Truck Line Company, O. I. M. Transit Corporation, Holland Motor Express, and—well, now, I believe that is about all I can recall just at the moment. There are several others, however.

Q. Does Wolverine Motor Express operate in there?

A. Not into Fort Wayne; no, sir.

Q. They operate over the Kalamazoo-Grand Rapids portion of the route, do they not?

A. Yes.

Q. Do you find the competitive situation, especially in connection with less-than-truckload traffic, rather keen there at the present time?

A. Yes, sir; we do; and it is not only keen there right now, but it always has been.

Q. And has the outbreak of the war served to make that situa-

tion either worse or better?

A. Well, insofar as the less-than-truckload traffic is concerned, we naturally are putting forth greater effort, of course, by reason of the lack of tonnage; having in mind also the fact that even prior to that, there was not sufficient tonnage for all of the lines to operate 100 percent.

1025 Q. Now, with reference to these intermediate points particularly, going north of Fort Wayne, is there any point along there where there is any great volume of outbound traffic!

A. Kendallville would be the only point.

Q. Kendallville, Indiana?

A. Yes, sir.

Q. And about what kind of a volume of traffic, what sort of a volume, is offered out of that point?

A. Well, I wouldn't want to attempt to answer that question just offhand here, Mr. Clardy. There is possibly—you are speaking now of less-than-truckload freight, are you?

Q. Yes.

A. Well, there is possibly 18,000 to 20,000 pounds per day, approximately, I would say, going in all directions.

Q. Well, that is what I was going to ask you.

A. Yes.

Q. That is, not moving particularly over this router

A. No.

Q. But fanning out, moving out in various directions.

A. Yes, sir; going in all directions. There is a very limited amount of tonnage, I would say, coming this way.

Q. And in the movements out of there, does a great deal of the traffic move in an east and west direction from Kendallville?

A. It moves principally to Chicago.

Q. Now, as to all of the other points intermediate—or 1026 rather, the other points north of Fort Wayne, is there anything of any size in there at all, that generates or originates any amount of outbound business?

A. There isn't anything that I know of, no, sir; and I am/very

positive that there isn't.

Q. Now, referring to the in-bound traffic, is Kendallville again about the only point where there is any considerable inbound volume?

A. That is correct.

Q. And again, is that primarily a movement from Chicago?

A. I think most of it is; yes, sir.

Q. Your lines operate into Kendallville, both north and south,

east and west, do they not?

A. Yes, sir; that is true. We operate over route 6 through Kendallville, and also north over 3, and part of 6, where we connect up with route 9, going up to Michigan.

Mr. CLARDY. Pardon me. Does your Honor desire to suspend

at this time?

Mr. BARKELL. No. Co ahead and finish with the witness.

Mr. CLARDY. All right.

By Mr. CLARDY:

Q. Now, witness, how many operations per day are you carrying on at the present time between Grand Rapids, Michigan, on the north, and Fort Wayne, Indiana, on the south?

A. Well, we are operating three units per day between Kalamazoo and Grand Rapids; and from five to seven units per day between Kalamazoo and Fort Wayne. Now are you speaking of less-than-truckload freight only?

Q. I am speaking now of the over-all picture.

A. Well, that is our operation.

Q. That is your entire operation.

A. Yes, sir.

Q. All right. Now, how much of that service is presently required to handle all of the less-than-truckload business moving over that entire route?

A. Oh, we possibly would be able to handle it with one and a

half units in each direction.

Q. One and a half units?

A. Yes.

Q. That would include service to and from Fort Wayne, Kalamazoo, and Grand Rapids, would it?

A. Yes, sir-on less-than-truckload tonnage.

By Mr. EGGERS:

Q. Is that what you are doing at the present time, Mr. Witness?

A. How is that?

Q. Is that what you are doing now?

A, Yes, sir; that is correct. That is, in other words, we are

Q. No.

A. We are distributing it in a truckload

By Mr. CLARDY:

1028 Q. But that is your best estimate as to what the daily average would run, is it?

A. Yes, sir

Q. And it is because of that fact that you have entered into the negotiations that you have referred to.

A. Yes.

Q. For diversion of traffic to the other line.

A. Yes.

By Mr. EGGERS:

Q. Well, then, Mr. Witness, am I correct in understanding that you do not handle any less-than-truckload freight between Kalamazoo, Michigan, and Fort Wayne, Indiana, at the present time?

A. No less than trackload less than 5,000 pounds.

Q. None less than 5,000 pounds.

A. No.

Q. But anything that is 5,000 pounds, or over-

A. Right.

Q. You are handling?

A. Yes, sir; that is correct. We will deliver that off of a road

unit, I might say.

Mr. CLARDY. Were you speaking, then, Your Honor—or did your question involve the point of Kalamazoo, or the intermediate points between Kalamazoo and Fort Wayne?

. Mr. Eggers. The intermediate points.

The WITNESS, Yes.

Mr. CLARDY. That is what I thought.

1029 Mr. EGGERS. Between those two points.

The WITNESS. That is the way I understood the question, and that is what my answer was predicated on.

Mr. Eggers. Go ahead. Pardon the interruption.

By Mr. CLARDY:

Q. But considering the principal points of Kalamazoo on the one hand, and Fort Wayne on the other, the volume is about how much?

A. Oh, I would say, from a trailerload to a trailerload and a

half of less than truckload freight.

Q. Per day?

A. Right.

Q. That is principally a north-bound movement; is it?

A. No, sir. It is the reverse with us.

Q. The other way.

A. Yes.

Q. Out-bound paper !

A. Some paper; yes.

Q. Well, now, maybe we had better get the complete picture there. Is there an unbalanced operation over your Grand Rapids-Fort Wayne route?

A. Yes.

Q. In which direction?

A. The light movement is north-bound from Fort Wayne.

Q. North-bound from Fort Wayne.

A. Yes.

1030 Q. Well, now, how does that compare relatively in percentage?

A. Well, I would say that about 65 per cent is south-bound, as against 35 percent north-bound, at the present time.

Q. It runs pretty close to 2 to 1, then-

A. Yes.

Q. In favor of the south-bound movement?

A. Yes.

Mr. CLARDY. That is all.

Mr. HARRY YOCKEY. Is that all of the direct?

Mr. CLARDY, Yes. Are there any questions?

Mr. HARRY YOCKEY. Yes.

Mr. BARKELL. Cross-examine.

Cross-examination by Mr. HARRY YOCKEY:

Q. Mr. Witness, starting at Fort Wayne, Indiana, and going to Kalamazoo, Michigan, your company operates how many trucks per day at the present time?

A. I stated previously, I believe, from five to seven units per day, depending, of course, upon the amount of tonnage that is

available..

Q. Well, now then, when do those trucks leave Fort Wayne, and when do they get to Kalamazoo?

A. Oh, they will leave Fort Wayne at all hours of the evening and night, and arrive at Kalamazoo at all hours of the morning.

Q. They do not all leave at one time, of course, and they do not all arrive at one time.

1031 Q. When does the earliest one of them leave?

A. The earliest!

Q. Yes; sir.

A. Well, it may leave at around six o'clock at night.

Q. Six o'clock?

A. Yes.

Q. And from then on until what time do they leave?

A. Until around five o'clock in the morning.

Q. Then, those trucks operate—well, now, you do not have a peddler run over that route between Fort Wayne and Kalamazoo, do you?

A. We do have.

Q. Oh, you do have?

A. Yes, sir; and any freight that was going to be peddled would be on the last unit.

Q. Leaving at what time?

A. Well, that would depend entirely on the amount of freight that that particular driver had to peddle going north. He, of course, could not arrive at Kendallville, Sturgis, or Three Rivers before the places of business at those points were open.

Q. Would be arrive there after they were closed?

A. We would not dispatch anything after they were closedno, sir.

Q. Well, then, what would you do with that freight?

A. Well-

1032 Q. Carry it on to Kalamazoo and then bring it back?

A. No, ir; we would not. I say, we would not dispatch

it out of Fort Wayne if it was not possible to deliver it.

Q. Well, now then, I understood you to say that you do have a limitation of 5,000 pounds to the intermediate points along that route.

A. Well, no, sir; we do not have any limitation. I just say

that at the present time we are handling it in that manner.

Q. Well, now, Mr. Witness, I understood the tenor of your previous testimony to be that you do have a limitation of 5,000 pounds to intermediate points along that route there. What did you mean by that?

A. Well, what I mean by that was, that is the present method of handling the freight. However, we are not limited to 5,000-

pound shipments.

Q. Oh! Then do you mean over that, or under?

A. Under.

Q. Well, now then, are you actually carrying any less than 5,000 pounds—any shipments less than 5,000 pounds over that route?

A. We may at times; yes.

Q. Well, are you?

A. Well, I would say we are.

Q. You think you are?

A, Yes.

Q. Well, now then, in the movement north from 1033 Kalamazoo—or rather, strike that out. In other words, coming back from Kalamazoo to Fort Wayne, what time do those trucks leave there—your night trucks?

A. Out of Fort Wayne?

Q. No. out of Kalamazoo.

A. Well, that would vary from six o'clock at night until around about—oh, possibly three o'clock in the morning:

Q. And those trucks arrive, then, for morning delivery at Grand

Rapids?

A. How is that?

Q. Pardon me?

A. I thought you were asking me, in that last question, about the trucks moving from Kalamazoo to Fort Wayne.

Q. Yes. Coming back, what time do they arrive in Fort Wayne?

A. Out of Kalamazoo?

Q. Yes.

A. Well, it is not to exceed four hours and a half from the time they are dispatched. In other words, if they left at six o'clock in the evening, they would be in there at 10:30 at night; or if they left at three o'clock in the morning, they would be in there at six-thirty in the morning.

Q. Now, then, how about your operation north from Kalamazoo

to Grand Rapids? When do your trucks leave there!

A. Kalamazoo?

Q. Yes.

1034 A. Oh, we have units leaving from Kalamazoo as early as five o'clock in the morning, and then we have another unit that leaves about 9:30 in the morning, and then we have still another one that leaves pretty close to noontime.

Q. Are either or any of those runs peddle runs?

A. They are drop-off runs.

Q. Do you have any 5,000-pound limitation on that route?

A. No, sir; we do not. We deliver freight in Plainwell and Wayland, Michigan.

Q. What is done with it there?

A. We deliver it.

Q. You deliver it?

A. Yes, off the unit.

Q. Well, now then, does that describe your operations north of Kalamazoo?

A. Yes.

Q. All right. Then, coming back, what time do the trucks:

leave Grand Rapids?

A. Well, there again that would depend on the volume of business that was available. In other words, they might leave there at four o'clock in the afternoon, but not later, I would say, than eight o'clock at night, approximately.

Q. From four in the afternoon until eight o'clock at night?

A. Yes.

Q. Have you arranged those schedules over a period of 1035 time to suit the convenience of your patrons?

A. Why, I would say so, yes, sir; and also to conform with other schedules of the Keeshin Company.

Mr. HARRY YOCKEY. I believe that is all.

Mr. BARKELL, Mr. Clardy?

Mr. CLARDY. Nothing further.

Mr. BARKELL. Are there any questions up here?

Mr. Eggers. No questions.

Mr. BARKELL. If there are no further questions, you may be excused.

(Witness excused.)

Mr. BARKELL. Mr. Des Roches, Mr. Yockey asked that you furnish him with the I. C. C. certificate number of Associated Truck Lines.

Mr. HARRY YOCKEY. I would like to have it for the last witness also.

Mr. CLARDY. We can put that in this afternoon, your Honor. We will have Mr. Duncan back again.

Mr. BARKELL. You can just furnish that to Mr. Yockey at your

convenience.

Mr. HARRY YOCKEY. Yes.

Mr. BARKELL. How about protestants' exhibit No. 20, which was identified by Mr. McKny?

Mr. CLARDY. I offer protestants' exhibit No. 20 in evidence.

Mr. BARKELL. Is there any objection?

1036 Mr. HARRY YOCKEY. No objection.

Mr. BARKELL. There being no objection, protestants' exhibit 20 is received in evidence and made a part of this record.

(Protestants' exhibit 20, Witness McKay, received in evidence.)
Mr. BARKELL. We will recess at this time until 1:30 this after-

(At 12:10 p. m., recess until 1:30 p. m.)

AFTERNOON SESSION'

The hearing was resumed pursuant to recess. 1:30 p.m.

Mr. Barkell. Come to order, please, gentlemen. Have you any further witnesses, Mr. Clardy?

Mr. CLARDY. Sir!

Mr. BARKELL I was just inquiring if you still have some witnesses.

Mr.-CLARDY. Oh, yes.

Mr. BARKELL. We are ready for them.

Mr. CLARDY. Mr. Betteridge.

George Betteridge was sworn and testified as follows:

Direct examination by Mr. CLARDY:

Q. Your name, Witness?

A. George Betteridge.

Q. Where do you reside?

1037. A. Petoskey, Michigan.

Q. By whom are you employed?

A. Parker Motor Freight.

Q. In what capacity?

A. Traffic manager.

Q. You have some knowledge, then, I take it, of the extent of the operations and business of your employer?

A. Yes.

By Mr. HARRY YOCKEY:

Q. I am sorry, Mr. Witness, but I did not get the name of your company.

A. Parker.

Mr. Clardy. Parker Motor Freight. This is the gentleman to whom Mr. Parker referred this morning, when he was on the witness stand; or rather, I should say, yesterday morning—who would be better able to testify about certain phases of the situation than he himself.

Mr. HARRY YOCKEY. Oh, yes.

By Mr. CLARDY:

Q. You answered my last question, I believe, that you do have such information about the business of Parker Motor Freight.

A. Yes.

Q. In preparation for this particular hearing, however, Witness, have you reinforced your general knowledge with some special checkups as to the amount of business that your company may have been handling to and from the various points that it serves?

1038 A. Yes.

Q. Would you tell us whether or not any of the towns which you serve are offering you any amount of out-bound freight, that is, freight moving to points off of your line in interstate commerce at the present time?

A. I am sorry, but I kind of got lost on the first part of that

question. Will you say it again.

Mr. CLARDY. Read it, please.

(Question read.)

A. Yes.

By Mr. CLARDY:

Q. What points?

A. Petoskey and Traverse City.

Q. Are those the only points that have any of that character of movement?

A. Yes.

Q. And is that out-bound movement a truckload movement, or a less-than-truckload movement?

A. Both.

Q. Both truckload and less-than-truckload.

A. Yes.

Q. All right. Now, Witness, confining my next question to the less-than-truckload portions of the traffic; does the volume of outbound less-than-truckload traffic from either one of those towns run into any great figure? If so, would you give us, please, some

estimate of about what it would run per day, per week, or

1039 per month?

A. Well, Petoskey, now, on the less than truckload business, is running three bottoms—three semitrailers.

Q. Well, now, that is on both intrastate and interstate traffic.

is it not?

A. Right.

Q. About how much of that would move in interstate commerce?

A. 80 to 85 per cent.

Q. Does that move principally toward Chicago?

A. Indiana and Illinois.

Q. Combined.

A. Yes.

Q. Very little of it moves toward the east; am I correct about that?

A. Very little.

Q. All right. Now, at the present time, Witness, you are interlining that freight with other motor carriers, are you?

A. Yes.

Q. At some point.

A. Yes.

Q. And that point is Grand Rapids, is it?

A. Yes.

Q. Now, witness, with those two points excluded, is there any appreciable tonnage, any amount of tonnage moving out-bound from any of the rest of the towns that you serve?

A. With those points excluded?

Q. Yes.

A No

Q. Taking all of the tonnage from all of the rest of the towns in the aggregate, about how much would it average per day, per week, or per month?

A. Less than five per cent,

Q. Of the total tonnage?

A. Yes, sir.

Q. That is, as compared with this amount which you just gave?

A. How?

Q. About five per cent of the amount which you just gave.

A. Yes.

Q. All right. Now, in connection with the inbound movement, which town or towns get the bulk of the less than truckload business moving in interstate commerce, and handled by your company?

A. Petoskey and Traverse City:

Q. So that those two towns are about the only towns, either out-bound or in-bound, of any importance, are they?

A. Right.

Q. Well, now referring to the inbound traffic, and dealing only with interstate commerce, less than truckload, about what does that average per day, per week, or per month?

A. Well, it is running right now, I will say, one bottom of

1041 less-than-truckload freight.

Q. Per day?

A. Per day, to each point,.

Q. Very well. Now, still referring to the in-bound movement, as to the remainder of the points on your route, how would that less-than-truckload, interstate tonnage compare with this amount which you have just mentioned?

A. I would say about five per cent. . .

Q. So that, aside from those two towns, neither the out-bound nor the in-bound tonnage amounts to very much in pounds, does it?

A. Right.

Q. Up to the present time, have any of these intermediate points, if you know, been in the midst of any preparation to increase the amount of tomage either out-bound or in-bound, in any way that you know of?

A. No.

Q. Has the condition which you have referred to there been pretty generally in existence over the past several years?

A. Yes.

Q. Now, Mr. Parker, as I recall it, testified that you interline a great deal at Grand Rapids?

A. Yes.

Q. You also interline, do you not, at other points along the way?

1042 · A. Well----

Q. Particularly at Cadillac.

A. Not in interstate commerce; no, sir.

Q. That is primarily in connection with intrastate commerce, is it?

A. Yes, sir.

Q. All right. Now, with regard to the effect of the outbreak of the war: has that affected your business at all?

A. It has our in-bound less-than-truckload business; yes.

Q. What affect has it had?

A. Well, the effect has been that there has been a drop, I would say, of between 40 and 50 per cent.

Q. 40 or 50 per cent ?

A. 40 to 50 per cent.

Q Now, the out-bound traffic being so small, has there been any noticeable effect on that—or just what is the situation!

A. Why, there has been an increase as far as the out-bound

traffic is concerned.

Q. To what do you attribute that?

A. That is due to the war condition, I would say.

Q. But even with that increase, is it still more than just a relatively few pounds per day?

A. Well-

Q. Still excluding now, of course, the two main towns, which you have mentioned, of Petoskey and Traverse City, Michigan.

1043 A. There has been no increase there at all; no.

Q. Do you mean by that, no increase at the small towns?

A. No.

Q. At the intermediate points?

A. No.

Q. All right. Now, referring again to the 40 to 50 per cent decrease, which you have had in your less-than-truckload business: Has that necessitated any change in your schedules, or any decrease in the number of units which you may have operated over the system?

A. No.

Q. Has it merely resulted, then, in a reduction in the percentage of loading which you are able to effect on the schedules which you have operated?

A. Yes, sir.

By Mr. BARKELL:

Q. Right there, Witness, do you mean to say that with a 40 to 50 per cent decrease in business, you are still operating the same number of vehicles over your route that you did before?

A. Yes.

By Mr. CLARDY:

Q. Will you explain why?

A. Because, as I stated just now, the out-bound tonnage has increased considerably, and there must be equipment available to

handle that out-bound tonnage, and therefore the equipment has to run into Petoskey in order to handle the out-bound freight.

1014 Q. Has that increase in your out-bound movement been principally to other Michigan points, however-

A. No.

· Q. So that it would be intrastate commerce?

A. No: it is interstate.

Q. Interstate.

A. Yes.

Q. Destined primarily to the Chicago area, also?

Q. By the way, Witness, do you have some arrangement covering the interchange of equipment with some carrier at Grand Rapids?

A. Yes.

Q. Do you use that arrangement in connection with your lessthan-truckload movement, or is it all a transfer proposition?

A. No, sir; it is not a transfer proposition.

Q. You are loading, then, so that you may interchange the bottoms with some other carrier, are you?

A. Yes.

Q. Is the business that your line enjoys in that area greater at one period of the year than at another-

A. Yes.

Q. Or does it average about the same from one day, one week, or one month, to the next?

A. No, sir; it is seasonal.

Q. And is that caused by reason of the fact that that is very largely a resort section of the country?

A. Yes.

Q. Is it customary, then, that that increase takes place in the summer, or the resort season, or times of the year?

A. Yes, sir.

Q. Well, now, Witness, has the usual time passed for that inbound increase that is normally to be experienced, or expected by your company at this time of the year?

A. Read that question, please.

Mr. CLARDY. I will rephrase it.

By Mr. CLARDY:

Q. We are now just starting the month of June.

A. Yes.

Q. Referring to the increase which is caused by the resort season starting: has the time of year been reached as yet this year, when that increase, if any, would be felt by your line in its movement in-bound?

A. It should start now; yes, sir.

Q. However, what has been your experience up to this moment with regard to the expected increase—or rather, the normal increase, that comes to your line about this time?

A. Well, right at the present time it does not look as if we

are going to get any increase.

Q. You were present here yesterday, were you not, Witness, when the witness Buck testified concerning the decrease in population in the area that you served?

1046 A. (No answer.)

Q. Or were you present in the hearing room at the time that witness was giving his testimony?

A. I don't recall it right now, and I don't believe I was; no, sir.

- Q. Very well. However, in any event, what has been your own experience, and what is your present knowledge with respect to the population trend, either up or down, in the area which you serve?
- A. It is staying pretty close to normal, I would say, or pretty close to what it generally is right now.

Q. Right now.

A. Yes.

Q. At this time of the year has it in the past been customary for an increase in the population to take place?

A. Yes.

Q. Which was maintained during the summer months.

A. Yes.

Q. But that has not started as yet?

A. Not yet.

Q. Now, Witness, Mr. Parker, when he was on the stand here yesterday morning, gave some general testimony about the nature of your operations, and the way in which you conduct them, but I want to ask you one or two specific questions further along that line.

A. Yes, sir.

1047 Q. In serving the intermediate points north of Grand Rapids, where there is apparently from your testimony, very little business, are you handling those points—or serving those points on the truck that goes all the way through from Grand Rapids to destination—

A. No.

Q. Or do you have a separate peddler set-up of some kind?

A. We have a peddler set-up:

Q. And does that peddler set-up also handle business starting at the origin point, and going clear through to the destination point, as well as dropoffs at the various stations along the way?

A. He handles freight through to final destination; yes, sir.

Q. Now, in connection with some of these intermediate points, are there periods of time when there will be no movement; either in-bound or out-bound, over a considerable length of time?

A. (No answer.)

Q. In other words, Witness, is the movement so small at some of the points, that it reaches the zero point—

A. Yes.

Q. Over a period of time?

A. Yes.

Q. At some of these points that are involved in this application, then, do you encounter long stretches of time when there is no service of any kind required?

1048 A. Well-

Q. That is, either in or out?

A. I don't understand just exactly what you have in mind, when you refer to long periods of time.

Q Well-

A. How long do you mean?

Q. Well, what is the fact? Say, over a period of days, or weeks,

perhaps.

A. Oh, there are some days when there is no freight moving either into or out of these intermediate towns. Yes, sir; that is correct.

Mr. CLARDY. That is all.

Mr. BARKELL, Cross-examine.

Mr. HARRY YOCKEY. No questions.

Mr. BARKELL. Are there any further questions of the witness?

Mr. Eggers. I have no questions.

Mr. BARKELL. If there are no further questions, the witness is excused.

(Witness excused.)

Mr. BARKELL. Call your next.

Mr. HARRY YOCKEY. Just so that we will not forget it, may I inquire of counsel if those I. C. C. docket numbers are available now?

Mr. CLARDY. Yes, sir; we now have the I. C. C. docket numbers.

1049 Mr. HARRY YOCKEY. To save time you may just state them into the record yourself, Mr. Clardy.

Mr. CLARDY. For Keeshin-pardon me? .

Mr. HARRY YOCKEY. Just read them into the record yourself. You do not need to recall the witness.

Mr. CLARDY. If I knew what they were I would. Just give me a moment here until I get them.

Mr. HARRY YOCKEY. Pardon me.

Mr. CLARDY. The I. C. C. docket numbers are: MC 3566-

Mr. HARRY YOCKEY. MC 3566?

Mr. CLARDY. Yes-and MC 3567.

Mr. Eggers. Which company is this?

Mr. CLARDY. Keeshin.

Mr. HARRY YOCKEY. Keeshin?

Mr. CLARDY. Yes. You are not interested, I take it, in the Indiana P. S. C. I. numbers, are you?

Mr. HARRY YOCKEY. No.

Mr. CLARDY. Or do you want that information also?

Mr. HARRY YOCKEY. Oh, no; I do not care for that. All we want are the I. C. C. numbers. Now, how about Associated Truck Lines?

Mr. CLARDY. Mr. Des Roches will give you that.

Mr. Des. Roches. The I. C.-C. docket number of Associated Truck Lines is MC 69833.

Mr. Clardy. Now, your Honor, may we be off the record 1050 for a moment?

Mr. BARKELL. Off the record.

(Discussion outside the record.)

Mr. BARKELL. Back on the record:

Mr. CLARDY. Now, gentlemen, we have Mr. Parker here, and we will tender him to you for cross-examination, if any, at this time.

Mr. HARRY. YOCKEY. You are not going to examine him any further on direct?

Mr. Des Roches. We have no further questions.

Mr. CLARDY. Not of Mr. Parker.

Mr. HARRY YOCKEY: We have none.

Mr. BARKELL. How is that?

Mr. HARRY YOCKEY. No cross-examination.

Mr. BARKELL. All right.

Mr. CLARDY. We can get rid of Mr. Parker in a hurry, then.

Mr. BARKELL. Yes. Let us have the next witness, then, Mr. Clardy.

Mr. Clardy. Will you take the stand, please, Mr. Orth?

J. B. ORTH was sworn and testified as follows:

Direct examination by Mr. CLARDY:

Q. Your name, Witness.

A. J. B. Orth.

Q. Where do you live?

1051 ' A. Grand Rapids.

-Q. Michigan?

A. Yes, sir.

Q. I believe you are employed by Interstate Motor Freight System.

A. Yes.

- Q. Your duties with that company, among other things, include solicitation; do they not?
 - A. Yes.
- Q. And a general investigation into traffic moving or to be moved over that line?
 - A. Yes, sir.
 - Q. How long have you been with the company?
 - A. About seven years.
 - Q. Your principal office, or station, is at Grand Rapids; is it?
 - A. Yes, sir.
- Q. Over the period of time during which you have been employed by Interstate Motor Freight System, have you been pretty constantly in touch with the shippers and receivers of freight over the lines radiating out of Grand Rapids?
 - A. Yes.
- Q. Have you recently at my suggestion, made some additional check-up and investigation up and down your lines with respect to the general traffic conditions that exist in the various towns that you have been acquainted with during the past seven years?
 - A. Yes.
- Q. Well, now, Witness, looking, if you will, at the map, a copy of which you have before you there: let us start at Grand Rapids first, and give consideration to the towns south of Grand Rapids. I wonder if you would tell us whether or not your recent special investigation has brought you into contact generally with the shippers at the various towns, both the termini points, and the intermediate points, between the termini points, such as—well, let us say, Sturgis, for the moment.
 - A, Between Grand Rapids and Kalamazoo.
 - A. Between Grand Rapids and Kalamazoo?
- . A. Yes, sir.
 - Q. That is, you handled the checkup only that far south?
 - A. Yes, sir; to and including Plainwell.
- Q. I believe also in addition to that, you investigated in various towns that you serve to the north of Grand Rapids; is that correct?
 - A. Yes.
 - Q. And toward Muskegeon?
- . A. Yes, sir.
- Q. All right. Now, Witness, based upon your experience and knowledge gained during the last several years, and also on the checkup and survey which you have recently made, would you tell us whether or not at the present time there is any appreciable out-bound tonnage moving from any of the intermediate points anywhere along the route where you made your investigation?

1053 A. As far as any southbound movement is concerned, there is nothing to speak of; no, sir. But as far as a northbound movement is concerned, there is some movement out of Big Rapids—on defense.

Q. Is that traffic moving in intrastate commerce or interstate commerce?

A. Mostly interstate.

Mr. EGGERS. Mostly what?

Mr. HARRY YOCKEY. Intrastate?

Mr. CLARDY. Interstate.

The WITNESS. Mostly interstate.

By Mr. CLARDY:

Q. Is that movement, however, a less-than-truckload movement, however, or a truckload movement, Witness?

A: The bulk of it is truckload or carload.

Q. Is the plant that you referred to a moment ago, the Hanchett Manufacturing Company?

A. Yes, sir.

Q. Now, that movement interstate, so far as the less thantruckload movement is concerned; is that of any size! If it is, can you give us some definite idea as to about what it is!

A. Outbound, very little.

Q. Less than truckload?

A. Very little less than truckload,

Q. All right. Now, let us direct our attention, Witness, to the in-bound-movement, with regard to all of these same 1054 points. What did your investigation reveal, if anything.

with respect to the in-bound movement to the intermediate points on these routes that you have just mentioned!

A. As to what, specifically, please!

Q. I mean, as to the amount or volume of tonnage moving into or out of those intermediate points.

A. Well-

.Q. Both north and south of Grand Rapids?

A. Taking the intermediate points south of Grand Rapids, to and including Plainwell, Michigan, there would be approximately a daily average of 5,000 pounds.

Q. Taking all of those towns together?

A. Yes, sir.

By Mr. EGGERS:

Q. Per-what?

A. Pardon me?

Q. Is that per day?

A. Yes, sir.

Mr. EGGERS, All right.

By Mr. CLARDY:

Q. And what would you say would be the average over the routes

to the north, which you are serving?

A. We cover the route from Grand Rapids to and including Big Rapids as a peddler route, and that totals about 30,000 pounds. Two-thirds of that, approximately, would be inbound.

Q. Well, now, Witness, are you including both truckload and

less than truckload traffic in that figure?

A. That would be less than truckload.

Q. Less than truckload?

A. Yes, sir.

Q. And does the bulk of that go to the single point of Big Rapids!

A. Yes. .

Q. Now, as to the balance of the towns taken together, about. how much of that 30,000 pounds would be represented!

A. About one-third.

Q. Approximately 10,000 pounds?

- A. Yes, sir; and out of that 10,000 pounds, the bulk of it probably would be to Rockford.
 - Q. The town of Rockford?

A. Yes, sir.

Q. Now. Witness, in making your investigation, do I correctly understand that you went far enough to find out something about the population of each of these towns?

A. Yes; approximately.

Q. And the total number of shippers and receivers of freight at each one of them?

A. Approximately; yes.

Q. And your investigation gave you some definite figures as to the number of shippers and receivers of freight specifically, did it not?

A. Yes.

1056 Q. Now, did-you, in making the investigation, also have some contact with some of the witnesses who were produced by the applicant at the original hearing in this case, from these various points along the way?

A. Yes.

Q. You interviewed a number of those witnesses, did you?

A. Yes.

Q. And you do not mean by that, do you, that they were the only ones?

A. No.

Q. You interviewed all of the witnesses in all of these towns did you not—or rather, I mean to say, all of the shippers in all of these towns?

A. Why, I wouldn't just say all of them; no, sir.

Q. Well, about what percentage of them, then, in the various towns, did you interview?

A. I would say from 50 to 75 percent.

Q. All right. Now, Witness, in interviewing that number of shippers, did you particularly single out the shippers who would have the largest volume, or somewhat the largest volume, moving into or out of those particular towns?

A. In great measures; yes, sir,

Q. Now, with regard to particular witnesses who were presented by the applicant here, do you have some recollection as to the identity of those whom you interviewed, or some of those 1057 whom you interviewed?

A. Yes.

Q. All right. Starting, then, at—well, starting at any point that is convenient to you, taking some town immediately south of Grand Rapids, what was the first point at which you interviewed a witness who has been presented by the applicant here?

A. Well, I don't just recall the names of the witnesses in the

particular towns south there.

Q. Well, do you have with you here some memorandum of the identity of the witnesses whom the applicant has presented, whom you did interview—

A. Yes.

Q. Without regard to what particular town the were from!

A. Yes.

Q. All right, Would you proceed, then, Witness, to take them up in the order in which you have them in the memorandum which you have there, and give us the name of the first witness whose name appears in that memorandum?

A. I am very sorry, Mr. Clardy, but I do not have the south

list. I only have the list from Grand Rapids north:

Q. From Grand Rapids north.

A: Yes.

Q. Well, let us take that one first, then, and we will get the other in just a moment.

1058 A: All right.

Q. Just go ahead.

A. I interviewed Mr. John M. Van Schelven, of the Van Schelven & Rau Hardware Company at Cedar Springs, Michigan.

Q. Cedar Springs, did you say?

A. Yes.

Q. Did you, in your interview with that gentleman, ask him something with respect to his appearance and his testimony at the original hearing in this proceeding?

A. Yes.

Q. In particularly, what, if anything, did you find out with regard to the connection, if any, between that particular witness, and either The Pennsylvania Railroad, or The Willett Company,

the applicant here?

Mr. Harry Yockey. Well, now, just a moment. I think counsel is going entirely too far afield now, if the Joint Board please. We have sat here for some time, now, listening to testimony which we do not believe has any probative value here, and now we are getting to the place where counsel is attempting to do something indirectly that he could not do directly. This witness, and all of the other witnesses, were on the witness stand in this proceeding, and counsel for protestants had ample opportunity to cross-examine them.

Mr. CLARDY. No; these are witnesses with respect to whom we had the stipulation.

1059 Mr. HARRY YOCKEY. Well, that does not alter the situation a particle. Their testimony is just exactly the same in the record. They were here, and they were sworn, and there was a stipulation entered into, as to what their testimony would be if they were put on the witness stand, and testified.

Mr. CLARDY. That is right.

Mr. Harry Yockey. Now, then, if they have gone out and interviewed these witnesses on the side, no matter who they may be, but particularly those witnesses who were in attendance at the ferrier hearing, and available for cross-examination, this testimony could be nothing but heartay. If they have gone out and talked to them, outside the presence of the Joint Board and Examiner, and outside the presence of counsel for the applicant, this testimony would be purely hearsay, and nothing else, and highly improper on that ground. It leaves us in no position to refute in any way what might have been done, or said. As I say, they had ample opportunity to cross-examine these witnesses when they were here. The matter is so plain, if your Honors please, that I do not think it needs any argument. I object to the question on the ground that it calls for hearsay testimony.

Mr. Clardy. Your Honor, the time-honored rule of hearsay does not cover an instance in which either a party to a proceeding, or a witness in a proceeding, says anything off the record, or at any other time, that deals with the issue involved, that will in

any way attack or affect the credibility of anything that

stance these witnesses were produced, but their testimony covered by a stipulation. The witness now on the stand, as he has testified, made an intensive investigation of the shippers generally up and down the line, including those whom he could reach—that is, not all of them, but including those whom he could reach. It is

important that we show, as we can show by the testimony of this witness, the connection of those witnesses, both past and present, either with The Pennsylvania Railroad Company, or The Willett Company, the applicant here; for the purpose of demonstrating to the Commission the reasons why they appeared in the proceeding, and the reasons why they testified. We have gone to a considerable amount of trouble, time, and expense to get this information. It is certainly material, and it is not covered by the hearsay rule, because it is the best-recognized exception to the hearsay rule, that all of the law books agree upon.

Mr. HARRY YOCKEY. If the Board please, I defy counsel for protestants to show me anything in any law book which states that that is an exception to the hearsay rule. I object to the question for the additional reason that it is for the purpose of impeachment of the particular witness, and the same would apply as to any other witnesses, with respect to whom a similar question is asked; and the law provides the manner in which that

shall be done. The witness himself must be produced, and 061 the foundation for impeaching him must then be laid, by

asking him the proper questions; so if they are seeking to refute the testimony of this witness, let them call the witness back here, and put him on the witness stand, and ask him the impeaching questions in the proper way as provided by law. Then we will have him here, and he will be subject to cross-examination.

Mr. CLARDY. Well, now-

Mr. HARRY YOCKEY. Just a moment.

Mr. BARKELL Let counsel finish.

Mr. Harry Yockey. But for them to go out and claim to have interviewed a witness, whether his testimony has been covered by stipulation or otherwise, and then try to prove something by this witness, affords us no opportunity whatever for proper cross-examination, and affords the Joint Board and the Commission no means of knowing what may or may not have been said or done; and I submit, that is very highly improper. The mere opportunity to cross-examine this particular witness is not sufficient.

Mr. CLARDY. Just a moment.

Mr. HARRY YOCKEY. For all of the reasons stated, I object to it.

Mr. CLARDY. Just a moment. We have not said that we are impeaching any specific statement made by that witness. We are developing through this witness matters that come under either the classification of admissions against interest, or statements

that are being used by us to attack the credibility of witnesses, in statement that they have made; and that is always

competent. It will show bias and prejudice on the part of this witness, and other witnesses, because we will develop testimony from these witnesses as to their past connections, and—

Mr. Eggers. I think this should be off the record.

Mr. BARKELL. Yes; off the record, Mr. Reporter.

(Discussion outside the record.)

Mr. BARKELL, Now back on the record. The opinion of the Joint Board, Mr. Clardy, is that the objection should be sustained.

Mr. CLARDY. Thank you, your Honor. Then I want to make a detailed offer of proof, because I regard this as very important, and I want to have the assistance of the witness here in making it. I would like to have him first name-or rather, I would like to make a statement in a separate part of the record here, as to what his testimony would have been with respect to each of those witnesses, had he been permitted to testify.

Mr. HARRY YOCKEY. Oh, now, if the Board please, I want to object to this manner of making an offer of proof: If counsel wants to make an offer of proof for the record, let him do it in the

usual wav.

Mr. BARKELL. That is right.

Mr. HARRY YOCKEY. Let it be done in the usual way.

Mr. Des Roches. Then, we will ask for a recess, if the Board please, until we have had an opportunity to confer with the 1063 witness, and find out just exactly what he would testify to.

Mr. HARRY YOCKEY. That is all right.

Mr. CLARDY. This is altogether too important to leave out. It directly affects the credibility of the witness, the witness referred to, and other wirnesses, and raises the question of bias and prejudice, in connection with a large number of the witnesses who have been presented here by the applicant; and as long as they are contending that they have proved something by those witnesses, it is certainly competent for us, your Honor, to show that.

Mr. DES ROCHES. We do not coach our witnesses beforehand. We have not conversed with this man at all, and we do not know

what he is going to say.

Mr. HARRY YOCKEY. We have not said that you did.

Mr. Des Roches. He is not a railroad witness.

Mr. BARKELL. Very well, then, gentlemen. We will take a recess of five minutes at this time for that purpose.

Mr. Des Roches. Thank you.

(A short recess was taken.)

Mr. BARKELL. Come to order, please, gentlemen. Are you ready to proceed now, Mr. Clardy, with your offer of proof?

Mr. CLARDY. Yes, your Honor My offer of proof, now, is this: that had the witness been permitted to answer questions along the line you have now excluded, with reference to his conversations with witnesses produced by the applicant he would have said in substance this: that as to the witness John M.

Rau of Cedar Springs, Michigan, that man has been, or was, an employee of The Pennsylvania Railroad for a period of 24 years; that therefore he has a soft spot in his heart for the railroad company; and that was the reason why he appeared and testified as a witness in this proceeding. The witness would further testify that L. W. Sawnyer of Sand Lake, Michigan, who was also produced as a witness by the applicant, is at the present time employed by The Pennsylvania Railroad, and receives money from the railroad company for the performance of that service. This witness would further state, if permitted to testify, that Ralph Jennings and Lloyd S. Reynolds, both of Howard City, Michigan, both witnesses produced by the applicant herein, both stated that they are selling merchandise to some ten or twelve railroad families. which in effect support their store, and that that was the reason why they appeared and testified in support of the railroad in this proceeding. This witness, if permitted to testify, would further, state that Fred Brack of Stanwood, Michigan, another witness produced herein by the applicant, stated that about 50 per cent of his business is rail, carload, and that the balance, consisting of less than truckload movements, is handled by truck. would further testify that N. T. Groff of Morley, Michigan, another witness produced by the applicant, stated that he is an old railroad employee; that he presently leases property from

the railroad: that he feels he is obligated to the railroad company; and for that reason, he appeared and testified as a witness in support of this application. The witness would further testify, if permitted to do so, that John Haveman-I do not know just how to pronouce it, but that is the name. I believe -. of Moline, Michigan, whom the stenographic record purports to show was also a witness presented by the applicant—and this is one place where I think my brother will agree with me, that it was mistakenly assumed that that witness was present at the hearing, when in fact he was not-stated, as this witness would have testified, that that is incorrect, and that in truth and in fact, he did not appear at the hearing. I want to say parenthetically, your Honor, that I am not objecting to his testimony being incorporated into the record, nevertheless, as a part of the stipulation, as we agreed; but I am merely pointing out that in error, the record shows that he was there, when, as a matter of fact, he was not there.

Mr. HARRY YOCKEY. May I say also, if the Board please, as to that, that if that did actually happen, it was merely because we got the wrong name of the man, or the name of the wrong man.

because we did have some other witnesses from that town; and a we supposed that he was the man whose name appears in the record.

Mr. CLARDY. I do not doubt that at all, counsel; and I am not raising any objection, as I said before, to the testimony appearing in the record. I am merely calling attention to the

error.

Mr. HARRY YOCKEY? If you want us to correct that, we will.

Mr. CLARDY. No, that will not be necessary. Just leave it as agreed.

Mr. HARRY YOCKEY. All right.

Mr. CLARDY. The record will speak for itself. I raise no point on that. I just want to have it appear of record, that that would have been a part of the testimony of this witness, had we been permitted to go into it. Now, if your Honor please, in order to make my offer of proof rounded out and complete; having made that statement, my offer of proof is that had this witness been permitted to answer the questions that I proposed to direct to him. except for your ruling, the witness would have given testimony substantially as I have recited it in the statement just made; and in addition to that, he would also have testified that he talked not only to these witnesses, but to various other witnesses, but the statements claimed to have been made by them are not presently familiar to me, because I do not have the information. In addition to that, I have another witness here who interviewed others, who would have testified along the same line with regard to those. others. However, I will not go into detail as to whom those others were, or what they said, because I think the offer of proof in con-

nection with this one witness will serve the purpose, and demonstrate my position with respect to what I regard as an error by the Joint Board in its ruling excluding that testis

mony.

Mr. BARKELL. The record will show your offer of proof Mr. Clardy.

Mr. HARRY YOCKEY. And the objection still stands.

Mr. BARKELL Yes, sir. Proceed.

Mr. CLARDY. That is all.

Mr. BARKELL, Cross-examine.

Mr. HARRY YOCKEY. No cross-examination.

Mr. BARKELL. Are there any further questions?

Mr. Clardy. Now, I will go on to another subject with the witness if you do not mind.

Mr. Landstrand. Well, now, just a moment. I thought you were through?

Mr. BARKELL. I thought you said you were through on direct.

Mr. CLARDY. There is one other matter I want to ask him about. Mr. BARKELL. All right.

By Mr. CLARDY:

Q. We gave you a list a moment ago of certain witnesses whom we were arranging to have here tomorrow. Do you have a copy of that, Witness?

A. Yes.

Q. You have that list there, or a copy of it, have you?

A. Yes, sir.

Mr. CLARDY. You have a copy of that also, I believe, Mr. 1068 Yockey, have you not?

Mr. HARRY YOCKEY. Yes.

By Mr. CLARDY:

Q. Now, Witness, as to the witnesses, and I believe there are if of them who are named in the list that we have just distributed here, did you contact, since the hearing yesterday, a number of those witnesses yourself, and have others contacted the balance as to whether or not they were going to keep their promise to us to appear here for us as witnesses tomorrow?

A. Yes.

Q. Between yourself and the others—and I will have you name who the others were—you contacted all of the witnesses whose names appear on this list, did you?

A. Yes, sir.

Q. And as to each one of them, did they renew their promise that they were going to appear here tomorrow and testify, if we so desired?

A. They did.

Q. And did you further advise him that you were contacting them again, because we were attempting here to work out a stipulation that would obviate the necessity for their appearance her on Wednesday?

A. Yes, sir.

Q. Now, will you name for the record who the other persons were, who contacted some of these prospective witnesses along with yourself?

A. Mr. Martin Elliott, of the Doyle Freight Lines, of

Cadillac, Michigan.

Q. Now, right there, Witness; he contacted the four witnesss whose names appear at the top of the list, at Cadillac, Michigan; is that correct?

A. Yes.

Q. All right.

A. And Reed City.

Q. And Reed City? .

A. Yes.

Q. Two at Reed City?

A. Yes.

Q. All right. Who else?

A. And Mr. Ernest E. Cross, of the Darling Truck Lines, located at Big Rapids, Michigan.

Q. He contacted all of the witnesses whose residence is given

as Big Rapids on this list, did he?

A. Yes, sir.

Q. And you contacted the balance; did you?

A. I contacted the witnesses who are named there as being at Howard City, Cedar Springs, Sand Lake, Rockford, and Stanwood.

Q. And who contacted witnesses at Cadillac, did you say?

A. Mr. Martin Elliott,

Q. Oh, yes.

1070 A. I think at the start of my statement I mentioned him.

Q. Yes; that is true. He contacted both the Cadillac witnesses and the Reed City witnesses; did he?

A. Yes.

Mr. CLARDY. That is all.

Mr. BARKELL. Mr. Des Roches, do you have any further questions of this witness?

Mr. DES ROCHES. Nothing.

Mr. BARKELL. Is there any cross-examination?

Mrs HARRY YOCKEY. Nothing.

Mr. BARKELL. If there are no further questions, the witness is excused.

The WITNESS. Thank you.

(Witness excused.)

Mr. BARKELL. Call your next.

Mr. Clardy, Now, so that the record will be clear, may I make this inquiry of the Joint Board: I have, as I mentioned a moment ago, another witness, from Interstate Motor Freight System, who interviewed some other witnesses, included among them being some who had appeared for the applicant, as I indicated. Do I correctly understand that if I presented this other witness here to testify on this same subject, the Joint Board, upon objection by counsel for the applicant, would make the same ruling, and preclude me from going into the subject matter with that wit-

ness of any admissions or statements that may have been made by those particular witnesses for the applicant?

Mr. BARKELL. Yes.

Mr. HARRY YOCKEY. Is he here?

Mr. CLARDY. Yes.

Mr. BARKELL. Your understanding is correct, Mr. Clardy.

Mr. Clarry. Then, your Honor, I desire to have the record show that I make the same offer of proof with respect to my additional witness, that I did in connection with the witness who just left the stand, except that the identity of the witnesses in this case would obviously be different from the other. Now, we have given to the opposition here a list of 17 witnesses who were interviewed again yesterday, following the hearing, or contacted, and notified that we were endeavoring here to enter into a stipulation to obviate their production here tomorrow, as we had originally arranged. The stipulation that we propose as to those witnesses, would be that the testimony, as to each and everyone of them, would be substantially the same on both cross examination and direct examination, as that elicited from the other witnesses whom we have produced.

Mr. HARRY YOCKEY. Shipper witnesses.

Mr. CLARDY. Yes; the shipper witnesses. Their testimony would have nothing to do with the testimony that has been presented here by company witnesses, or operating witnesses. Does that substantially cover what we agreed upon last night,

Mr. Yockey?

1072 Mr. HARRY YOCKEY. Yes; that is correct; with the exception that the agreement was there would not be to exceed 15.

Mr. CLARDY. That is correct.

Mr. HARRY YOCKEY. And you now say that there are 17.

Mr. CLARDY. I will probably have to strike two of them, then, because that was our agreement, that is true. I thought at the time it would not exceed that number, but as it turned out, there were two more.

Mr. HARRY YOCKEY. Well, that is all right. We will not be too

technical about it, if you want it that way.

Mr. CLARDY. Well, we want to be fair with you, and if you want to include in the other stipulation the name of the man who was there, but whose name was not included, it is agreeable with us that you do so.

Mr. HARRY YOCKEY. I told you that I would take your word for it, that you did not need to put the man on the stand. I said, if you would make the statement, I would take your word for it.

Mr. Clardy. I did not do that, because I preferred to have them checked again, and that is why I asked those questions of him. As a matter of fact, that is the reason that he did not get here until noon today, because he made a special trip to see them.

Mr. HARRY YOCKEY. The record may show, if the Joint Board please, that we agree to the stipulation covering the 17 wit

1073 nesses referred to.

Mr. CLARDY. Thank you,

Mr. BARKELL. All right.

Mr. CLARDY. Well, now, your Honor, I would like to recall Mr. Christie for a little further cross-examination.

Mr. HARRY YOCKEY. Well, now, your Honor, as we understand

it, the cross-examination of Mr. Christie has been closed. .

Mr. CLARDY. Well, his cross-examination has not been closed until I have excused him, and I have not excused him as yet. I specifically stated at the last hearing, and I believe the record will show it, that I had not excused him.

Mr. HARRY YOCKEY. If the Joint Board, please, the case for

the applicant has been closed.

Mr. BARKELL Well, now-

Mr. HARRY YOCKEY. We have rested.

Mr. CLARDY. Yes, but my case is not closed until I have finished my cross-examination of this man in the light of a number of things.

Mr. BARKELL. Off the record.

(Discussion outside the record.)

Mr. BARKELL. Back on the record.

Mr. CLARDY. Will you come up, Mr. Christie, please.

Mr. HARRY YOCKEY. Now, then, if your Honors please, I submit that if this witness is going to be recalled by the protestants 1074 for further cross-examination on certain omitted matters.

we are entitled to have the specific subjects stated in the record, that Mr. Clardy is going to cross-examine the witness in connection with, that he has omitted; so that we will avoid getting back into a general cross-examination on matters that have already been covered.

Mr. Eggers. Can that not be taken care of, Mr. Yockey, as the

questions are asked?

Mr. CLARDY. I should think so.

Mr. HARRY YOCKEY. Well, we may run into a little difficulty there, but whatever way the Board wants to proceed is agreeable to me.

Mr. BARKELL Let us proceed.

Mr. CLARDY. My first question will deal with the first matter that I have in mind.

Mr. CHRISTIE. Do I need to be sworn again?

Mr. Clardy. No, you were sworn once before.

E. M. Christie recalled:

Cross-examination (continued) by Mr. CLARDY:

Q. My first question. Witness, is this: do you have with you here today, and if you do have, will you now produce for my use, the contract, or a copy of the contract which has been entered into

between yourselves—that is, The Pennsylvania Railroad—and The Willett Company of Indiana?

A. I do not have the agreement with me.

1075 Q. Does anyone else in your entourage here today have the contract, or a copy of it, if you know?

A. Well, I believe that there is one copy that covers a particular route in the possession of someone here, but I do not know just who.

Q. Do you have somewhere in your files, however, whether it is present in the hearing room here or not, a copy of the complete agreement that has been entered into between The Pennsylvania Railroad Company and The Willett Company of Indiana?

A. In the files in the office.

Q. That is what I mean.

A. Yes.

Q. And it would not be too difficult a task to supply a copy to the Joint Board and the Commission, would it, Witness!

A. No, sir; it would not be such a difficult task.

Q. Will you do so?

A. No.

Mr. CLARDY. Now, your Honor, since the Interstate Commerce

Commission has said in a letter dated May 28, 1942—

Mr. HARRY YOCKEY. Just a moment, please, Mr. Clardy. I think perhaps we can save some time here. The answer of the witness is that he will not produce it unless the Joint Board or the Commission orders him to produce it. That is correct, is it not, Mr. Christie?

The WITNESS. That is right.

Mr. HARRY YOCKEY. If the Joint Board or the Commission orders him to produce it, it will be produced.

The WITNESS. Certainly.

Mr. HARRY YOCKEY. I just make that suggestion in order to save time.

Mr. BARKELL. Mr. Clardy made reference to a letter. Let us hear what he has to say further in that connection.

Mr. CLARDY. Thank you, your Honor. The Interstate Commerce Commission in a letter dated May 28, 1942, has said thisand I would like to read this into the record with your permission.

Mr. BARKELL. All right.

Mr. Clarry. After the opening paragraph, referring to the request that I made for a subpoena, the Commission says: "One of the documents, which you request, is a copy of the contract between The Willett Company and The Pennsylvania Railroad, under which service will be performed if the application is granted. I understand that the applicant has indicated to the Joint Board

that if it considers the contract relevant, it is agreeable to supplying a copy for the record. The Joint Board having participated in the earlier hearing, is familiar with the issues, and is in a position to judge whether the contract is relevant and material. It is suggested, therefore, that the question of the production of the contract be taken up with the Joint Board at the

further hearing; and if the Joint Board believes the contrack should be made a part of the record, the applicant will supply it." Now, as. I understand it, from the statement made just now by Mr. Yockey, if the Joint Board so indicates, he is willing that a copy of the contract be supplied. I raise the point now that obviously that is one of the most material things that can be before you in this proceeding, because until we have inspected it, we cannot possibly know what the definite arrangement between them may be; and we may be confronted with the argument, at some time or another, "Well, the service which you propose"-speaking of protestants-"is not exactly the same, because we have got a clause"-a trick clause-"in this contract, which provides that The Willett Company shall do a certain thing on every other Wednesday"-or something of that kind-"that you have not said you would do." Now, until that contract is in the record, your Honor, I say that we are not possessed of all of the facts that are material, with regard to what kind of service is really proposed; and I therefore, on the basis of the letter. which I have just read you, ask at this time that a request be made by the Joint Board upon either the applicant. The Willett Company, or The Pennsylvania Railroad, that a copy of the agreement be produced here.

Mr. HARRY YOCKEY. If the Joint Board please, this matter has come up in other cases, and we never have been required to

produce these contracts, or copies of them, before, except at 1078 the time when we got our certificate. And even in those instances they have not been filed with the Tariff Department, but we have been ordered, as the order will show, to file them with the Commission. Now, that is in line with the general policy of the Commission, with the respect to contracts, not requiring the contracts to be produced. Now, then, this record shows what the standby charge is, and it also shows what the mileage charge is. That has all been gone into, and that is. already in the testimony. Mr. Clardy's clients, the truckers, have stated that they are ready and willing to perform the service, provided they have sufficient tonnage. That has all been gone into already here. Now, out of respect for this Joint Board, we are not meaning to be discourteous in saying we will not produce it, because, as I have just explained, if we are required to produce it, we will do so. Now, the fact that the Commission

would not issue a subpoena for it, I believe is in line with the general policy of the Commission in that regard. Of course, this Joint Board has jurisdiction of the matter, to determine that question, but I do not believe that you are going to do any more or anything different that the other Boards have done. Now, naturally, as I say, if you tell us to produce it, we will produce it, but we do not believe that it is competent here.

Mr. Des Roches, May I be heard, your Honor?

Mr. BARKELL. Go shead.

Mr. Des Roches I think that there is still another reason why the contract is material here. I believe that this Joint

Board, and the Interstate Commerce Commission, are interested in knowing whether or not the applicant is going to be subsidized by The Pennsylvania Railroad, whether it is going to be a railroad operation, or a motor-carrier operation. If this application is granted, the carrier naturally will come under the jurisdiction of the Interstate Commerce Commission. I believe that the Joint Board should be interested in the contents of the contract, so as to be able to determine just what the relationship is here, and so that it can finally be determined as to just how the carrier is going to be regulated.

Mr. Clardy. And add to that this, your Honor: so long as it is their argument, and it has been up until the present moment, that this is a service that can only be performed by their own child, it certainly is material here to know what the precise provisions covering the service may be in the contract. Otherwise, when you gravely conclude, if you do take that position, that you are going to decide the application in favor of the applicant, and that this is the kind of service that requires the railroad to use its own facilities, through The Willett Company, rather than being the kind that some other carrier, common in nature, could perform or, furnish, you will then be in utter ignorance of what the precise nature of the agreement is. If the contract is not

produced, then certainly I shall move, and I think the motion 1080, should be granted, to have stricken from this record every

word of testimony dealing with the nature of the arrangement, on the ground that we asked for it at the very start of the proceeding, because it was the best evidence of the nature of the relationship; and it has not been produced. They have been asked to produce it, as the record shows, and as the Commission has indicated in what I read you. Therefore, if it is not produced and I say this in advance of what is going to happen, in merely ordinary justice, and fairness, everything that deals with that instrument, or has any relation thereto, should not be considered by you, and should be stricken from the record. Now, if the other

side wants to take either horn of that dilemma, it is all right with me.

Mr. Harry Yockey. Now, if the Joint Board please, there are just two things that I want to say in response to what Mr. Clardy has said, and then I am through. To answer his first proposition, this does not involve anything that is unusual, or out of the ordinary, or anything of that sort. I have stated for the record, and I state again at this time, that this is exactly the same form of contract that has been used in every one of the other cases covering all of the other 25 routes that are in operation at the present time. Those contracts are on file with the Interstate Commerce Commission, and there has been no collusion, or anything else out of the way in connection with them, because the Commission has approved them. It has issued a definite order, the Commission

has, putting its stamp of approval upon them. Now, 1081 in the next place, Mr. Clardy says that he wants to get at

the reasons why The Pennsylvania Railroad Company wants. The Willett Company to render this service. Well, we tried to go into those reasons, and we tried to get them into the record. We asked Mr. Christie, when he was on the witness stand before, to state the reasons why The Pennsylvania Railroad preferred the service of The Willett Company to the service of other truck lines, and counsel for protestants objected to that, and the Joint Board sustained the objection, and would not permit us to state in the record our reasons why the railroad wanted the service performed that way; and then I made my offer of proof, but it was ruled out. We did all that we could to get into the record the feasons, but they would not permit us to do so. The record here, by the offer of proof, specifically covers the proposition as to the reasons why; and that has been ruled out of the case.

Mr. CLARDY. I did not ask any questions in that regard.

Mr. HARRY YOCKEY. As to why?

Mr. CLARDY. No.

Mr. HAERY YOCKEY, I do not understand you, Mr. Clardy. Do

Mr. CLARDY. That is not the reason I am asking for the contract at all.

Mr. HARRY YOCKEY. Well, I do not care to argue the matter any further. As I say, I think it has been covered.

Mr. Eccers. Yes; I think we have enough in the record on this, now.

Mr. BARKELL. Off the record, Mr. Reporter.

(Discussion outside the record.)

Mr. Barkell. Back on the record. Gentlemen, it is the opinion of the Joint Board that this contract should be filed as a late exhibit, with copies thereof served on all parties of interest, and also the Joint Board, within 10 days from this date, or June 11th.

Mr. HARRY YOCKEY. May I ask, your Honor: do you mean a copy of one of them!

Mr. BARKELL. How is that?

Mr. HARRY YOCKEY. Do you mean just one copy, or 17 copies!

Mr. Clardy. Maybe I am wrong, your Honor, but I had understood that all of these routes were embodied in one contract."

Mr. BARKELL, Yes.

Mr. HARRY YOCKEY, No.

Mr. Eggers. That was my understanding.

Mr. CLARDY. Are there several different ones?

Mr. HARRY YOCKEY. There are different contracts, all in the same form, but each describes a different route.

Mr. CLARDY. All of the same general form-

Mr. HARRY YOCKEY, Yes. ...

Mr. CLARDY. Except for the different description of the high-

Mr. HARRY YOCKEY. Yes.

Exam. Bryan. Why not attach all of them togethe, and make one exhibit of them, and submit that as a le

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Mr. Des Roches. We will be satisfied with one, your Honor.

Mr. Barkell: You will be?

Mr. Des Roches. Yes. .

Mr. BARKELL. One route will be sufficient, then.

Mr. HARRY YOCKEY: How is that?

Mr. Barkell. Counsel says that a copy covering just one of it routes will be sufficient.

Mr. HARRY YOCKEY. All right.

fa Mr. Clardy. May I make this suggestion, so that there will be be any question about it, now: furnish a complete copy of a particular agreement, with any different verbiage that there my be in any of the others, if there is any such in any of the other set out on a separate sheef. In other words, what I have in mid is this, that there may be a few extra words in some of the and if there is any difference, just put it in on a separate sheet

Mr. HARRY Yocker. I guess Mr. Lindstrand has the copies. .

Mr. BARKELL. What are you going to do now, Mr. Yockeyintroduce it now!

Mr. HARRY YOCKEY. I thought your Honor just ruled that w

would be required to do that. " Mr. BARKELL, No. 1 did not say right now. I said, with 10 days

1084 Mr. HARRY YOCKEY. All right.

Mr. BARKELL. How are you going to be able to crosser the amine on it if it is going to be filed as a late exhibit!

Mr. CLARDY. Oh, well, I am assuming that I will be permitted cross-examine on the basis of the document. That was the

derstanding I thought I had, as we went along.

Mr. Barkell. That was not my understanding. Mr. Clardy, new said that they would file it as a late exhibit, and that was rading that was made.

Mr. CLARDY. That is all right, but what I had in mind was, that could use this for the purpose of cross examination, without niting until the other one is in, since the language is the same.

Mr. Harry Yockey. The Board has ruled against you on that, I understand it.

Exam. Bryan. It is not in evidence, Mr. Clardy.

Mr. Clardy, I agree that it is not in evidence, your Honor, t I certainly do not want to consent to the filing of any late hibit, unless I am going to be permitted to cross examine. I not want to have the hearing adjourned just for that. I was rely suggesting that as we went along, since the language is esame, according to the statement of Mr. Yockey, and we will cept that. Now, why not use that as the basis for cross ex-

amination of this witness! There certainly cannot be any objection to that course, can there! You are not objecting

to that course, are you, Mr. Yockey?

Mr. HARRY YOCKEY. I am not objecting to anything, Mr. Clardy, he Joint Board has ruled, and we are going to follow the ruling the Joint Board. They have ordered us to produce it within days from today, furnishing you with, a copy, and that is what are going to do.

Mr. Clardy: Well, that will not do me very much good, as ras the cross-examination of this witness is concerned on that cument, to be furnished with a copy 10 days from today. It here, and as far as cross-examination is concerned, furnishing e with a copy will not be of any avail unless I have the privilege seeing it and reading the language of it here today. As long it is here, there certainly can be no reason why I should not eit.

Mr. HARRY YOCKEY. If the Joint Board please, I move that we receed. The time is flying.

Mr. BARKELL. Yes.

Mr. CLARDY. No; let us not proceed, your Honor, until we find at what we are going to do about this matter.

Mr. BARKELL. Off the record.

(Discussion outside the record.)

Mr. Barkell. Back on the record. It is the opinion of the oint Board that the ruling shall stand. You may continue with wother cross-examination that you may have.

Mr. Clardy. Well, then, your Honor, I desire to have the record show at this time that I am withdrawing any sug-

gestion that I may have made, as to any agreement for a late filing of any exhibit by the applicant, because I made it very plain at the time, as we went along here, that since counsel for the applicant had here a copy of the contract, that represented, as he stated, the same language as it contained in all of the contracts. I would not object to a late filing, and that as a matter of fact I wanted it, because I could use the copy that he has here for cross-examination; and I specifically said that I did not want to ask for an adjournment simply for the purpose of cross-examination, when a copy of the contract was present here. Now, the late filing that I agreed to was certainly conditioned upon my being allowed to do that, and if you will go back and read the record, or have the Reporter read it to you, you will see that I said that all the way through. Therefore, I want the record to show now that I anr withdrawing my agreement to any late filing of a copy of the contract, unless I am permitted to cross-examine on it at this time.

Exam. Bryan. Mr. Clard, you can make reference to it, and comment on it, in your brief, can you not?

Mr. Clardy. Why, certainly I can, but I cannot ask this witness any questions about it on cross-examination, unless I ask for a further hearing, and that is granted; and I do not want to do that. I will make that request, however, if I am not permitted to cross-examine the witness at this time.

Mr. Harry Yockey. The Joint Board has ruled, and the applicant is perfectly willing to abide by the ruling. It is not a question of whether counsel for protestants is willing to agree to anything, or not. The Joint Board has made its ruling. Now, let us abide by that ruling.

Mr. Barkell. The ruling of the Joint Board will stand. Let us proceed.

Mr. Clardy. Well, then, your Honor, I am going to make another request, and that is that the copy that they have present here in the hearing room, and that has been in the hands of the Joint Board, be produced and made accessible to me for cross-examination of this witness. I think I am clearly entitled to that.

Mr. Harry Yockey. The Joint Board has already ruled. This is exactly the same question that we had up before. The Joint Board has ruled, and we are going to abide by the ruling of the Board. Now, we are never going to complete this proceeding, if the Board please, if this counsel is going to be permitted indefinitely to stand up here and try to browbeat everybody in this case.

Mr. CLARDY. Well, now, if I am not being made the victim of persecution, then I am unable to understand what is going on here.

Mr. HARRY YOCKEY. I can hardly imagine anybody trying to persecute you, Mr. Clardy.

088. Mr. Eggers. Off the record.

Mr. CLARDY. If I may, your Honor-

Mr. EGGERS. Or do you want this on the record?

Mr. CLARDY. Yes.

Mr. BARKELL. All right.

Mr. CLARDY. I just simply want to say this on the record, your Honor: I have not been in any of the other cases in which this contract, or a similar contract, was involved. Neither have any of my clients, and neither have any of the protestants who are parties to this proceeding. None of us have ever seen that contract, other than to physically see the paper when it was handed up to you here a few moments ago. It is not in the record, according to the statement that Mr. Yockey just made here, in any of the other cases; it is not of record anywhere, where it is available for inspection by anybody. Now, since that is the case, if we are going to go forward now on the assumption that there is such a contract. then I think very clearly, since a copy of it is here, and since thus far, as I said before, no protestant has ever been able to see it, we ought to be given the opportunity at this time to go into it, particularly when there is a witness on the stand before us here, who can be cross-examined with respect to it. Now, if the contract were not here, as it might well not have been, we would have a different

situation; but so long as it is right here in front of us in the bearing room here, within 10 feet of where I now stand,

and as long as it has been in the hands of the Joint Board, certainly I should be permitted to cross-examine the witness upon it. I think, just in ordinary justice to the protestants here, either that should be done, or the motion which I am now going to make to strike from the record every bit of the testimony of the applicant with respect to the existence of such a contract, or the terms of it, or the nature of service that is called for in it, should be granted; and I desire the record to show that I am making such a motion at this time, unless I am given the opportunity to cross-examine this witness upon the contract here and now.

Mr. Harry Yockey. I have no desire to prolong this discussion, if the Joint Board please. I take it that I can only say again what I have now said several times before, that the Joint Board has ruled, and we have stated that we are going to abide by that ruling.

Mr. BARKELL. Mr. Clardy, the opinion of the Joint Board is that the ruling of the Board will stand, and your motion to strike the testimony indicated will be denied.

Mr. Clardy. I believe we agreed at the outset, if I am not mistaken, that exceptions would automatically follow an adverse ruling.

Mr. BARKELL. That is right.

Mr. CLARDY. Thank you.

(The applicant will furnish within 10 days a copy of one 1090 of the contracts in effect between the Pennsylvania Railroad Company, and The Willett Company of Indiana.)

Mr. BARKELL. Do you have further cross-examination of this

witness, Mr. Clardy!

Mr. CLARDY. Yes, indeed.

Mr BARKELL. Proceed.

Mr. CLARDY. All right.

By Mr. CLARDY .:

Q. Now, Witness, let us turn to a more pleasant subject here. Will you look at applicant's exhibit No. 5 in this proceeding, please.

A. 5?

Q. Yes.

A. All right.

Q. Do you find it there?

A. Yes.

Q. O. K. Referring to the first entry, Fort Wayne-Kalamazoo, with your map, applicant's exhibit No. 2 in front of you also, if you will, please, would you take the first town out of Fort Wayne that is on this proposed route, and tell me, if you can, the precise amount of tonnage, both in-bound and out-bound, being handled at the present time by the Pennsylvania Railroad in less than trucklead service, to and from that particular town?

, A. No, sir; I cannot do that, because I do not have those figures

with me.

Q. I did not hear the answer.

1091 A. I say, I do not have the figures available with me here that would show the present tonnage into and out of each town along this route.

Q. Well, now, Witness, at the moment I was only asking you.

about the first town there. .

A. Well, I do not have that.

Q. Could you tell me anything at all, then, about the present tonnage moving in interstate commerce, less than truckload, to and from that particular town at this time?

A. No, sir; I could not. I do not have any figures that I could

give you on that:

Q. Well, without going over each town in detail, then, Witness, would your answer be the same with respect to each and every one of the towns on the proposed route?

A. Yes.

Q. All right. Well, then, could you give me—since you do not have that information, could you give me any figure at all with respect to either the inbound tonnage or the outbound tonnage, less than truckload, moving in interstate commerce, that presently would move to any of these points via the combined rail-truck operation proposed in this application?

A. No, sir, I cannot, because I do not have the figures here show-

ing that for each town.

Q. Well, Witness, my question is only with regard to the individual towns. I am interested particularly in the inter-

1092 mediate points.

A. Well, that is just what I am telling you, now, that I do not have the records available showing that information for each individual point.

Q. All right.

A. This is the record of tonnage along the routes:

Q. Well, yes; I know what your exhibit No. 5 is, and I do not want to go into it again—

A. All right.

Q. Because we went over that somewhat in detail at the last hearing. I want to ask you another question, though.

A. All right, sir.

Q. Have you ever had in the preparation of applicant's exhibit No. 5 any precise, detailed figures with respect to the inbound and outbound tonnage at each of the individual towns involved, on the entire set of routes here proposed?

A. Will you repeat that, please.

Mr. CLARDY. Read it.

(Question read.)

A. Yes, sir. In the working up of this exhibit, of necessity I had to take the reports of The Pennsylvania Railroad to get the monthly tonnage inbound and outbound at each of the points in order to make up this exhibit.

By Mr. CLARDY:

Q. What is the precise description of the data, document, book, or record, from which you obtained that information?

A. Well, I took that information from two or three different records. One of them is what is known as the CT-601. report of stations. Another record—

Q. Just a moment, please, Witness, before you go further.

A. All right.

Q. Is the number, which you just stated, a form number assigned by your railroad company to a particular kind of report?

A. That is the form number that is assigned by The Pennsylvania Railroad to a particular form of report; yes, sir.

Q. And that is, what kind of report?

A. Station operations report.

Q. Does it, however, set up any break-down in any fashion or form, of the precise amount of inbound and outbound less than truckload interstate freight?

A. No, sir; it does not. It sets up the tonnage.

Q. The total tonnage?

A. Right.

Q. In other words, then, that sets up the gross inbound and outbound tonnage at each particular station; is that correct?

A. Well, it represents the tonnage inbound and outbound. Just where you get the word "gross," I do not know.

Q. At any rate-

A. It is the tonnage inbound and outbound.

Q. At any rate, Witness, it includes both truckload and 1094 less than truckload figures, does it not?

A. No.

Q. Figures for both the truckload and less than truckload movement.

A. No, sir; it does not. We do not handle truckloads of freight.

Q. I mean, carload, and less than carload. I forget at times, just for the moment, that you are not engaged in the trucking business, and I get them confused.

A. No, sir; it does not include any carload tonnage. It includes

just the less than carload.

Q. Just the less than carload.

A. Yes.

Q. All right. Now, what was the other form that you mentioned—or rather, that you were about to mention?

A. CT-610.

Q. And what does that cover?

A. That covers—or rather, that shows the amount of less than carload tonnage loaded in cars.

Q. And again, that does not break the tonnage down into inter-

state and intrastate; is that correct!

A. Right.

Q. And obviously, neither one of those forms would show whether it we freight that was freight handled all the way to destination by your line, or not, would it?

A. Well, now, Mr. Clardy, I do not think you understand

1095 yet the method by which this was worked up.

Q. Well, perhaps I do not, Witness, because you may have some peculiar meaning of your own there.

A. If you so desire, I will be very glad to explain it to you-or, at least, try to explain it to you. "

- Q. I would like to have you.

 A. All right. We will take, for instance, the tonnage in a small station, the small station of Avilla, Indiana. Now, if that man got any carload or less than carload freight into or out of his station, form CT-601 would show it. But if he did not, then the tonnage would be shown in the proper column of the report as so much in, so much out, and so much transferred per month. Then from his knowledge of the operations of the railroad, a man would know whether the freight was handled in a local peddler car or not.
- Q. Well, now, by that do you mean, Witness, that some general, system averages would be applied-

A. No.

Q. To get that figure?

A. No, sir: I do not mean anything of the kind.

Q. Well, then, what do you mean?

A. I mean, that if this record would show, this report, that he did not get any carload or less than carload tonnage into or out of his station, a man's knowledge of the operations of the rail-

road would tell him that it was handled in a local peddler

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Q. Well, now, apparently you thought I was asking you another question.

A. No

Q. My question was-

A. I understood your question.

Q. Well, my question was this. Witness, do any of these forms, or either of these forms, which you have mentioned, indicate on their face anything about the origin of any shipment, as to whether it originated off of your line, or on your line

A. No.

Q. Or as to whether it was interstate or intrastate?

A. No, sir; it would not show that.

Q. You would not have any information as to that?

· A. No.

Q. And you did not have any information of that kind when you made up applicant's exhibit No. 5, from any source at all, did you?

A. No. sir; I did not. Exhibit No. 5, as I stated before, shows

the total tonnage.

Q. That is what I understood.

A. Yes. .

Q. Well, then, to get back to my question once more. Witness, you do not have any data at the present time with you here, and

you did not have any data in your preparation of appli-1097 cant's exhibit No. 5, that would show the information that I have just been talking about?

A. (No answer.)

Q. That is, to show you the precise amount of interstate less than truckload freight that was handled to and from each of the various stations, or points, on that line?

A. No, sir; I do not have that, but I applied the tonnage in this way: I made a study of the number of shipments, interstate

and intrastate

Q. Where; on your entire system?

A: No, sir; just on this particular part of the railroad that the application here covers.

Q. Well, now, will you pause just a moment right there-

Mr. HARRY YOCKEY. Now, just a moment, counsel. The witness is trying to answer your question.

By Mr. CLARDY:

Q. Where did you get-

Mr. HARRY YOCKEY. Now, just a moment, if the Joint Board please. The witness is right in the midst of trying to answer one of counsel's questions, and now counsel is starting to ask another question.

Mr. CLARDY. I just want to know, as the witness goes along

here

Mr. HARRY YOCKEY. He is trying to explain it to you. Give him a chance.

Mr. CLARDY. Where he got the information.

1098 Mr. HARRY FOCKEY. I appeal to the Joint Board.

Mr. CLAPDY. I merely want him to tell us-

Mr. HARRY YOCKEY. Well, now, Mr. Clardy, I can keep going here just as long as you can. The witness is trying to answer your question. Now, give him an opportunity to finish his answer.

Mr. BARKELL. Yes; let the witness complete his answer to your

question: You apparently interrupted him.

Mr. CLARDY. All I want the witness to do, your Honor, is to tell us, as he goes along, where he got the information.

Mr. BARKELL. All right.

Mr. HARRY YOCKEY. But first let the witness finish the answer that he is now trying to make to counsel's question.

Mr. CLARDY. But I say, as he goes along-

Mr. BARKELL. Just a moment.

Mr. CLARDY. I am just trying to save time, and make the record a little more intelligible as we go along here. It was not my intention to interrupt the witness.

Mr. BARKELL. Well, right at the moment we have the witness apparently right in the middle of an answer. Now, let the witness finish his answer.

Mr. CLARDY. But may I have the witness instructed, your Honor, as he goes along in his answer, to tell us the source of the particular information—

Mr. EGGERS. Let him complete his answer first ..

1099 Mr. HARRY YOCKEY. Yes; let him go ahead and finish his answer, and then you may ask him that question after he is finished.

Mr. CLARDY. Well-

The WITNESS. I was going to do that.

Mr. Clardy. Well, do it any way you like, even if it takes all day. Go ahead.

The WITNESS. Now, will you go back and tell me where I left off, please, Mr. Reporter.

(Answer read.)

A. (Continuing.) Which showed that 91.8 percent of the shipments were interstate. Now, in the past year, not on this particular part of the railroad, but on other parts, a study of the tonnage was made, and the percent of interstate tonnage will just about agree with the percent that I found. Now, get that right: assuming that that would apply here correctly, the amount of interstate tonnage would be 91.8; but I do not have that for each individual station along the route.

By Mr. CLARDY:

Q. Well, now, you answered that before.

A. All right.

Q. And you gave exactly the same general answer. I made a note of it, and I have got it written right down here. But I did not ask you that.

Mr. HARRY YOCKEY. May we proceed with the cross-examination of the witness, your Honor, instead of having counsel argue with the witness.

Mr. BARKELL. Yes; let us proceed.

Mr. CLARDY. I want the witness to answer this question directly, your Honor.

By Mr. CLARDY:

Q. Witness, have you ever had at any time anything other than the average method which you have just described, or have you used any other method in trying to arrive at the precise amount of less than truckload interstate freight that moves to or from any of the stations that are involved in this particular application?

A. No.

Q. Thank you.

A. Now, let me add: when I say that, I am referring to less than

carload freight, and not less than truckload freight.

Q. Yes that is correct. I am using the term, as far as you are concerned, improperly, I agree.

A. You are.

Q. But you know what I mean.

A. Well, I think I know what you mean, yes; but, of course, I want to be sure.

Q. Then, as to each and every town that is involved in this application, if I inquired to find out from you how much tonnage would move inbound, and how much would move outbound by truck, if this application is granted, you would be unable to answer me, would you not?

A. At the present time; yes.

· Q. That is what I mean.

A. That is right.

Q. And you did not have any information upon the basis of which you would have been able to answer that same question at the time you prepared the exhibits for this case, did you—and particularly applicant's exhibit No. 5?

A. I had only the total tonnage, not separated as between intrastate and interstate tonnage, except as I have described it to .

vou.

Q. And not as to towns.

A. Yes.

Q. How?

A. Yes.

· Q. But you have not separated-

A. I had it separated as to towns; yes.

Q. Well, but you have not separated it as to towns in any of your exhibits here, have you?

A. No.

Q. And you could not at this time separate it as to towns, no matter how long I might interrogate you, could you?

A. Not today; no.

Q. And you were not able to do that at the last hearing either, if I remember it correctly.

Mr. HARRY YOCKEY. Oh, now, I object to that. 'Counsel' is just arguing with the witness again.

Mr. CLARDY: Not at all.

Mr. HARRY YOCKEY. The record will speak for itself. is not involved here.

Mr. CLARDY. I think it is.

Mr. BARKELL. Oh, let the witness answer the question.

A. I can answer that question. It can be done, yes, sir; but it would take a considerable amount of time to do it.

By Exam. BRYAN:

Q. Mr. Witness, did you not testify at the last hearing in this case, that 91.8 percent was interstate, and 8.2 percent was intrastate?

A. Of the shipments; yes.

Q. Is that not in the record?

A. Of the shipments; yes.

Mr. CLARDY. And that is just what he got through saying a moment ago here, your Honor.

The WITNESS. Yes.

Mr. CLARDY. But the question that I asked him was not as to the aggregate. My question was as to whether he had, as he explained, used any method other than figuring out what it was on the system, and then figuring that that would apply here—

The WITNESS. No.

Mr. CLARDY. Or whether he had gone to each town-

The WITNESS. I went to each town-

1103 Mr. CLARDY. Never mind, Witness. Let me finish my statement. And sought to obtain accurate figures as to precisely what tonnage was handled into and out of each town. Now, he tells me that he has not ever had that, and he does not have it now.

Mr. HARRY YOCKEY. Oh. no.

The WITNESS. No.

Mr. HARRY YOCKEY. He did not tell you that.

Mr. Eggers. We are getting a good deal of argument into the record, now, gentlemen. Let us proceed with the cross-examination of the witness.

Mr. CLARDY. All right.

The WITNESS. I might say

Mr. CLARDY. Just a moment, now, Witness. Give me an opportunity to ask another question.

The WITNESS. All right.

By Mr. CLARDY:

Q. Have you in the preparation of applicant's exhibit No. 5, that we have been referring to here, ever had before you—or did you ever have before you, precise figures that showed the exact amount of in-bound interstate freight, and the exact amount of out-bound interstate freight at each of these points, each of these towns, separately?

A. Now, I would like to explain that, if you please.

Q. No; answer my question first, Witness, and then you may, explain it to your heart's content.

1104 A. No; I cannot answer it-

Mr. BARKELL. Answer the question directly, first.

The WITNESS. I cannot answer that question with a yes-or-no answer. I will have to explain.

Mr. EGGERS. That appears to me to be a simple question, Witness. Did you have those figures before you, or did you not/have them before you?

The WITNESS. I worked up the tonnage for each town, into and

out of each town, at each point along this line.

Mr. Eggens. Yes?

The WITNESS. And then, insofar as the percentage of interstate and intrastate was concerned, I had the percentage at each town applying to those shipments. Now, that is the situation.

Mr. CLARDY. All right.

By Mr. EGGER:

Q. But not as to the total.

A. Not as to the total.

Q. All right.

A. The percentage, applying to the shipments.

Mr. CLARDY. All right.

By Mr. CLARDY:

Q. Now, Witness, you at this time are unable to recollect, or to give me any of the figures with regard to any of the towns, are you?

A. No.

Q. I just want to be sure of that.

1105 A. Absolutely, I cannot.

Q. And when I asked you that same question at the last hearing, you were not able to do so at that time either, were you!

A. No.

Mr. HARRY YOCKEY. Now, just a moment.

Mr. CLARDY. Just a moment.

Mr. HARRY YOCKEY. The record will speak for itself.

Mr. Eggers. I think we are getting somewhat repetitious here. Mr. Barkell. Well, the witness has answered the question, any

way. Put another question, Mr. Clardy.

Mr. Clardy. Now, your Honor, I want to ask the witness another question, and have him answer it.

By Mr. CLARDY:

Q. Witness, have you made any effort since I interrogated you on the witness stand at the last hearing in this proceeding, to obtain, or get, any of those figures, or to refresh yourself in any way as to those figures?

A. You are referring now, are you, Mr. Clardy, to the amount of interstate and intrastate tonnage at each station-

Q. Right.

A. Is that right?

Q. Yes.

A. No; I have not.

Q. Very well. Now, then, Witness, would you look at the map here and tell me at which of the points on this route-or on

these routes you do not have station agents available to receive freight when it is offered there.

Mr. HARRY YOCKEY. Well, now-

Mr. BARKELL. Did. you not go into that matter before. Mr. Clardy?

Mr. CLARDY. No.

Mr. HARRY YOCKEY. I think you did.

Mr. CLARDY, No. :

Mr. BARKELL. I am not certain.

Mr. CLARDY, I specifically did not go into it at that time, your Honor. I overlooked it; I forgot it.

Mr. BARKELL. All right.

Mr. CLARDY. And I very carefully reviewed the record and then made a note of it so I would not forget it again at this time. There is nothing in the record to show where his railroad company does and does not have station agents.

The WITNESS. I can answer that.

Mr. CLARDY. If there is, then I certainly was sound asleep, and I have not been able to find it by reading the record.

The WITNESS. There was not anything said about that before— I can answer that; but I could not tell you that unless I would have the records of the Pennsylvania Railroad in front of me here. I just don't remember, that is all. There are too many towns to remember.

1107 By Mr. CLARDY:

Q. Well, Witness, do you have any data here, or is there any publication by your railroad company, that would show that information?

A. Oh, yes.

Q. Would that show A. That is, there is a publication of the company, I mean to say, but I do not happen to have it here with me at this time.

Q. Would that show, for example-or rather, that would not be shown in the timetable schedules, would it?

Q. Because they deal only with passenger travel.

A. Yes.

Q. Or passenger traffic, perhaps I should say.

A. Yes.

Q. What is the document that would show that?

A. AD-80, which is a book about two inches thick, and about

8 by 12 inches in dimensions.

- Q. Well, just out of your memory, just out of your recollection, Witness, are you able to recall fland something about the points on this route, whether they do or do not have station agents available?
 - A. Well, I can recall that as to some of them; yes, sir.

Q. As to which ones?

A. For instance, at County Spur; there is no station agent there. At Orono there is no agent there. I know that there are others also, where there is no agent, but I cannot recall them offhand.

Q. All right. You do not know at the present time anything about the time at which delivery can be effected to the shippers or receivers of freight at any of these towns along the proposed route, do you!

A. I couldn't tell you the exact time; no, sir. I could just

merely guess at it, but that is about all.

Q. Well, my question, Witness, was intended to be a little bit more specific than that—or rather, to call for an answer a little bit more specific than that. Are there any points along the way at which you are familiar with the shipping customs and habits of the shippers or receivers of freight at those particular towns, so that you can tell—s when the place of business of those shippers or receivers would be open to receive the freight, and when they have been open to receive the freight that you may have for them?

A. Well, no, sir; I don't have any such information available

with me right at this time.

Q. Well, have you ever made any survey, yourself, of that situation at all!

A. Well, yes, sir. At the time, that was taken into consideration. I have a record here of Grand Rapids, for example, showing opening at seven o'clock in the morning, and closing at six-

thirty o'clock in the evening.

1109 Q. What are you speaking of now, Witness?.

A. Our station at Grand Rapids;

Q. Your own station!

A. Yes.

Q. In my question, I was not referring to your station.

A. What are you talking about, then!

Mr. Fogers. Mr. Clardy is talking about the places of business of the shipping public, as I understand it.

Mr. Clardy. Yes.

Mr. EGGERS, That is correct, is it not?

Mr. CLARDY. That is correct.

Mr. Eggers. As to when those places of business open, and when they close.

Mr. CLARDY: That is right:

A. Oh, no. I haven't any such information. I didn't understand your question before. I am sorry.

Mr. CLABDY. I thought you must have misunderstood the question, when you said something about having a record of some kind.

A. No.

By Mr. CLARDY:

Q. You do not have any information on that score at all, have you!

A. No.

Q. So that, then, when you prepared applicant's exhibit No. 4 here, you did not take into account anything about the times, or the hours, at which the public, the shipping public—ship-ing and receiving public—at the various towns along the

way, would or could receive or handle freight at all, did

A. Yes, sir; I did.

Q. Oh, you did?

A. Yes.

Q. Where did you get that information ?

A. When I took into account applicant's exhibit No. 4—or rather, I mean to say, when I was preparing exhibit No. 4, I had in mind how the trucks would connect with the train schedules of The Pennsylvania Railroad, and how they could deliver to the stations along the route. I also took into consideration the time that the truck must arrive at the terminal, in order to go outbound freight loaded on the cars of The Pennsylvania Railroad, for forwarding. Now, in doing that, you cannot serve every little point that there is on a railroad in the way in which they would want you to, possibly, but you must serve the bulk of them. For instance, when you send a freight train, a local freight train, out of Grand Rapids to Cadillac, this man at the first station out here is going to get his freight late. In other words, you just cannot serve the both of them at the same time.

Q. Well, then, it all comes down to the fact, does it not, that in setting up applicant's exhibit No. 4 here, you did not take into account the hours of receiving and delivering freight, as far as the consignors and consignees are concerned, but rather,

just the matter of convenience to the railroad company in carrying on this operation?

A. I would not say that the matter of convenience to the railroad was the only thing that was taken into account; no, indeed. Our purpose in making this up was to get the freight to the receivers just as quickly as possible—the receiving public—and we know that, generally speaking, the receiving public will accept freight between, for example, the hours of nine o'clock in the morning and four o'clock in the afternoon.

Q. Do you know anything about that, with regard to any of the intermediate points between your key terminals, as to precisely when any of the shippers located at those points will have freight ready for delivery to the carrier that will take it from that par-

ticular town?.

A. Well, we know that they are having it ready at the present time, when the local freight train goes along there during the day, and we have every reason to believe that they will have it ready when and if the truck comes along there. Now, another thing that I might add right along that line—

Q. Well, now-

A. That is, if you are interested—

Mr. CLARDY, No. Witness; I am not interested in any further

volunteered statement on your part.

Mr. Eggers. If there is something further you want to develop, Mr. Christie, your counsel, Mr. Yockey, can ask you
 about that on redirect.

The WITNESS: All right.

By Mr. CLARDY)

Q. My Question, Witness, is simply this. Is the truck schedule which is set forth on applicant's exhibit No. 4 here precisely the same as to hours of arrival and departure, as that of your trains at each of these points?

A. No.

Q. So that will represent a change, then?

A. Yes.

Q. All right. Now, Witness, I am not sure that we touched on this before, but in any event, if we did, I do not think we went very far into it. How many trains will bring freight into Fort. Wayne, Indiana, that will be transferred to the trucks at that point, that will move over this particular route?

A. Well, that would be hard to say. Q. Can you give us a general idea?

A. Well, we have, of course, certain trains—that is, the railroad company has certain trains, that the cars are scheduled to come in, but they may come in on any train, and the number of trains will tary from day to day. Now, you take your cars coming in from the east generally to Fort Wayne, and they would arrive in there at—well, there are some of them that would arrive at

around four or five o'clock in the afternoon, and others would arrive at around ten o'clock at night, and others would arrive around twelve-thirty midnight—or rather, in the morn-

ing, 12:30 a.m.; and then there are others that would arrive

around 4:30 in the morning, and others that would arrive around 6:30 in the morning; so that there are various different times that those trains will arrive.

Q. Now, Witness, I want to ask you a question with respect to one statement which you made, as appears at page 524 of the tra script of the preceding hearing in this matter, at which you were asked this question by Mr. Yockey—or rather—no. I will take that back. That is not what I had in mind, either. I do not think the question was asked of you by Mr. Yockey. At any rate, Witness, you were asked this question:

"Q. Will you please explain wherein there will be such a reduction in expense, which occurs by the elimination of the use of

boxcars?". And you answered:

"A. By handling the freight in trucks, we will eliminate the

use of approximately 860 boxcar days per month."

Now, you were not asked specifically as to what you based that particular answer upon, and I want to ask you this question now: was that answer based upon the assumption that the figures set forth in applicant's exhibit No. 5 would represent the tonnage moving?

A. No.

Q. Or is that one of the bases that was used in arriving at that precise figure of 860 boxcar days?

A. No, sir. What I did there was this: I took into con1114 sideration the number of cars shown as having been moved
on these 610 reports, and also the fact of the less than carload merchandise cars from the CT-352 classification of less than
carload cars; and then I took into consideration the amount of
freight that the trucks would haul, and where they would haul
it, to and from; and I eliminated all of those cars, as described before; and that is where I got that figure.

Q. All right. Now, where did you get the figure that you just mentioned, when you stated that you took into account the amount of tonnage that the trucks would haul? Where did you get that

figure?

A. I got that figure from the CT-610 reports, and from the CT-610 reports, that showed the tonnage that was hauled in those

peddler waycars, which were excluded in the CT-352.

Q. In other words, then, you got that figure from the data which you mentioned previously, that you had used in preparing applicant's exhibit No. 5 here; is that correct?

A. With the elimination-

Q. Well, now-

A. Of the cars

Q. You can answer that question yes or no, Witness. Is that correct, or not?

A. No, sir. I will not agree to that,

Q. Well, then, what is correct !

A. I wanted to explain—I was just starting in to explain it to you, and you interrupted me.

Q. You can answer that question directly.

Mr. BARKELL. Never mind arguing back and forth, now, gentlemen. Answer the question.

Mr. EGGERS. Mr. Clardy, may I interrupt to ask one question of Mr. Christie right there!

Mr. CLARDY, Yes.

By Mr. EGGERS:

Q. Mr. Christie, did you not say that applicant's exhibit No. 5 was prepared substantially from those two different ports that you specified, that were prepared at each station, and ind you not also say that those same reports were used in determining how many cars—or how many car days would be saved?

A. Yes, sir; that is correct. We have a CT-352, which is a

schedule of less-than-carload merchandise cars.

.Q. Yes.

A. Now, we took into consideration this schedule tonnage, the tonnage handled in those cars—well, this tonnage is handled in a number of those cars, and we get a great many days out of those cars; and we figured the cars that we could eliminate if we handled the freight by truck.

Mr. CLARDY, Well, apparently, Witness, you have missed the

point of my question entirely.

By Mr. CLARDY:

Q. The basis for the figured elimination, then, was that, series of numbers which you have mentioned, indicating

1116 the forms; that is, the figures which you took off of that form, or those forms, were used by you both to prepare applicant's exhibit No. 5—

A. Yes.

Q. And also to arrive at the conclusion that 860 boxcar-days would be saved. Is that correct, now, or not?

A. That is substantially correct; yes.

Q. All right. This figure of 830 boxcar-days, which is the estimate that you give on page 524 of the transcript of the former hearing, pertains and applies only to the tonnage which is represented by applicant's exhibit No. 5 here, which purports to be the tonnage moving for a particular month. Is that correct?

A. Yes.

Q: Which I believe was the month of December, last year.

A. Yes-that is substantially correct.

Q. Now, then, as to the future, looking at it as of today, and the days to follow, you presently have no idea as to the specific number of boxcar days, if any, that will be saved, have you?

A. Well-

- Q. Now, Witness, you can answer that question yes or no, and then if you have some explanation to make, you are at liberty to make it.
 - A. Repeat the question.

Mr. Clardy. Read it, please.

(Question read.)

1117 A. No, sir; I have no knowledge as to the specific number, as of today. That is correct.

Q. All right.

A: However, that fluctuates, of course, from month to month, but it would be approximately the same. Now, if your tonnage increased, why, then your cars would increase; and on the other hand, if you tonnage decreased, why, then your cars would decrease also to a certain extent.

Q. It would all depend on whether or not applicant's exhibit No. 5 is an accurate portrayal of precisely what is going to move in the future, or whether it is less, or greater. That is correct,

is it not?

- A. Well, no, sir; for this reason, that your wavears operating over the division, are going to operate, regardless of whether the tonnage is less, or more. Now, in your question—as far as your question is concerned, your could put more tonnage in them, but at the same time, if your tonnage were to decrease 10 percent, your wavears would still operate. Now, since last December there have been changes made in the wayear situation, which have changed that figure. It will change, you might say, from month to month.
- Q. And that will fit all of the other figures—or apply to all of the other figures in the estimates which you gave on the pages of the transcript following page 524, about the overtime of the local freight trains.

IIIs A. Yes.

Q. And so forth.

A. That was the December figure.

Q. Yes.

- A. That I worked that up on.
- Q. That is what I thought.

A. That is right.

Q. Well, now, Witness, do you have any present acquaintance with the nature of the arrangement that the Pere Marquette

Railroad has entered into with these motor carriers, the representatives of which you heard testify here today?

A. No, sir; I have not; except what I have heard here today.

I really didn't know anything about it until today...

Q. You had heard nothing about it?

A. No, sir; I didn't know anything about it until I heard them testify with reference to it here today.

Mr. CLARDY. That is all I have.

Mr. BARKELL. Are there any further questions of the witness? Mr. HARRY YOCKEY. Will your Honor indulge us just a moment, please? No, we have nothing further.

Mr. BARKELL. Are there any further questions up here?

Mr. Eggers. I have nothing further.

Mr. BARKELL. If there are no further questions, you may be excused, Mr. Christie.

1119 The WITNESS, Thank you.

Mr. Clardy. Your Honor, before the witness leaves the stand, may I again make the request that I be given the opportunity to cross-examine him on the contract. At least, I ought to be permitted to examine the document itself.

Mr. BARKELL. Mr. Clardy, the ruling of the Joint Board has been made on that matter, and we are going to stand by that

ruling.

Mr. Clarry. Well, your Honor, then I will ask merely for an opportunity to examine the document itself, to see whether or not I would like to ask the witness any questions about it.

Mr. Barkeri. That is up to counsel for the applicant, Mr. Clardy. If they want to permit you to examine a copy of the contract, that is all right with me. But the ruling of the Joint Board was that they should file a copy of it for this record, within 10 days, and they have said they would do that; with copies served on all parties.

Mr. Clardy. All right. I understand also that you have ruled against me on my motion to strike all of the testimony with respect to the existence of any contract, or the terms of it, or the nature

of the service that is called for in it. Is that correct?

Mr. BARKELL: Right.

Mr. CLARDY. Well, then, in order to lag a foundation for a petition for a further hearing in this matter, where I can

the record show my request that when we have finished here today, the proceeding be continued to a date to be set by the Commission, so that I may cross-examine the witness at that

Mr. BARKELL. The motion to continue the case to another date to be set by the Commission is denied.

Mr. HARRY YOCKEY. The witness is still on the stand, your Honor. Is that all, Mr. Clardy?

Mr. CLARDY. Just a moment, please. . I am just trying to make

up my mind.

Mr. BARKELL. Is there anything further from the witness?

Mr. CLARDY. No.

Mr. BARKELL. You may step aside, then, Mr. Christie.

(Witness excused.)

Mr. BARKELL. Now, is there anything further?

Mr. Des Roches, Yes.

Mr. CLARDY. Without prejudice to our motion with respect to the contract, which you have already denied, and our motion for an adjourned hearing at which we might have an opportunity to cross-examine the witness with respect to the contract, we ask permission to file a brief in this matter. After we have had an opportunity to examine the contract, we may or may not desire to file a petition with the Commission for a curther hearing. We will determine that later, after we have seen a copy of the contract.

1121 Mr. HARRY YOCKEY. I do not just understand counsel's statement. Do you mean, you want to file a brief on that

specific proposition?

Mr. CLARDY. No. no. Mr. Des Roches. No.

Mr. CLARDY. I say, we may or may not desire to file a formal petition with the Commission for a further hearing, and an opportunity to coss examine with respect to the contract, after we have seen a copy of the contract, which we are to receive within 10 days as I understand it. But subject to that, I say, we are asking promission at this time to file a brief in this case.

Mr. BARKELL. Mr. Yockey, do you also desire to file a brief in this proceeding?

Mr. Yockey. I did not hear your Honor.

Mr. EGGERS. With respect to a brief.

Mr. BARKELL. Do you also desire to file a brief?

Mr HARRY YOCKEY. Do you mean, a brief covering the entire proceeding?

Mr. BARKELL, Yes.

Mr. HARRY YOCKEY. Why, as far as the applicant is concerned, your Honor, we do not have any particular desire to file a brief, no, sir.

Mr. CLARDY. Well, I do.

Mr. BARKELL. How much time would you like?

1122 Mr. CLARDY. Well, it will probably require a little, additional time, for the practical reason that I want to analyze,

not only the testimony in the record, but also what I regard as the legal fallacies that have been followed in the past, and show that even if the rulings of the Commission in the past were good, still they do not apply to the facts in this case.

Mr. BARKELL. We will allow protestants 30 days time to file

their brief.

Mr. CLARDY. Well, we may have to ask for an extension, then, your Honor, because it will take some little time to get out this two-day record.

Mr. BARKELL. Suppose we say, then, 30 days after receipt of the

transcript.

Mr. CLARDY. But we do not know exactly when that will be, and I understand that it is necessary to set a definite date.

Mr. HARRY YOCKEY. How about 45 days?

Mr. CLARDY. 45 days will be perfectly agreeable.

Mr. Des Roches. That is all right.

Mr. Eggers. Say, July 15th:

Mr. BARKELL. July 15th?

Mr. CLARDY. All right.

Mr. Des Roches. That is all right.

Mr. LINDSTRAND. And I take it, if your Honor please, that the one brief date is for all parties.

1123 Mr. BARKELL. That is correct.

Mr. HARRY YOCKEY. Well, of course, if a brief date is going to be set, we will file a brief also.

Mr. LINDSTRAND. There will be no reply briefs.

Exam. BRYAN. No. Reply briefs are not permissible.

Mr. HARRY YOCKEY. How is that, your Honor?

Exam. BRYAN. I say, there will be no reply briefs.

Mr. LINDSTRAND. No.

Mr. HARRY YOCKEY. Oh, no, I understand that. I just say, if a brief date is going to be set, then we will file a brief also.

Mr. BARKELL, A date has been set.

Mr. HARRY YOCKEY, All right.

Mr. BARKELL. All right.

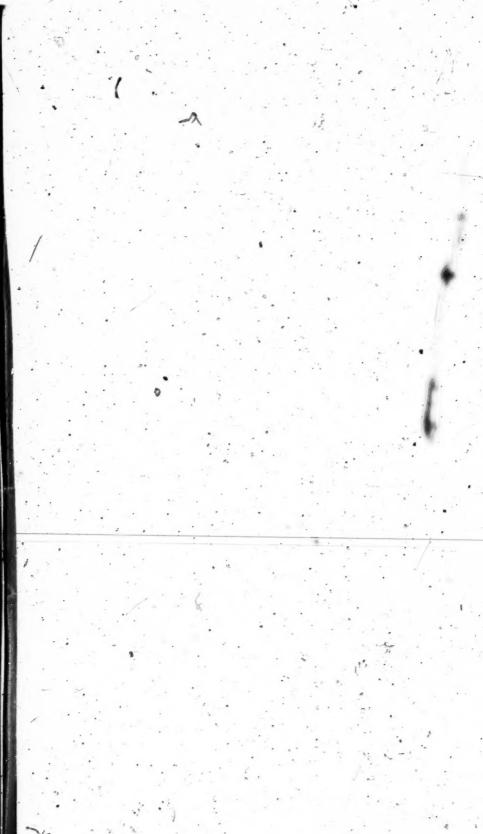
Mr. HARRY YOCKEY. For the applicant, and the intervener. We are not saying that we will not file one. We are saying, if a date is set, we will file one.

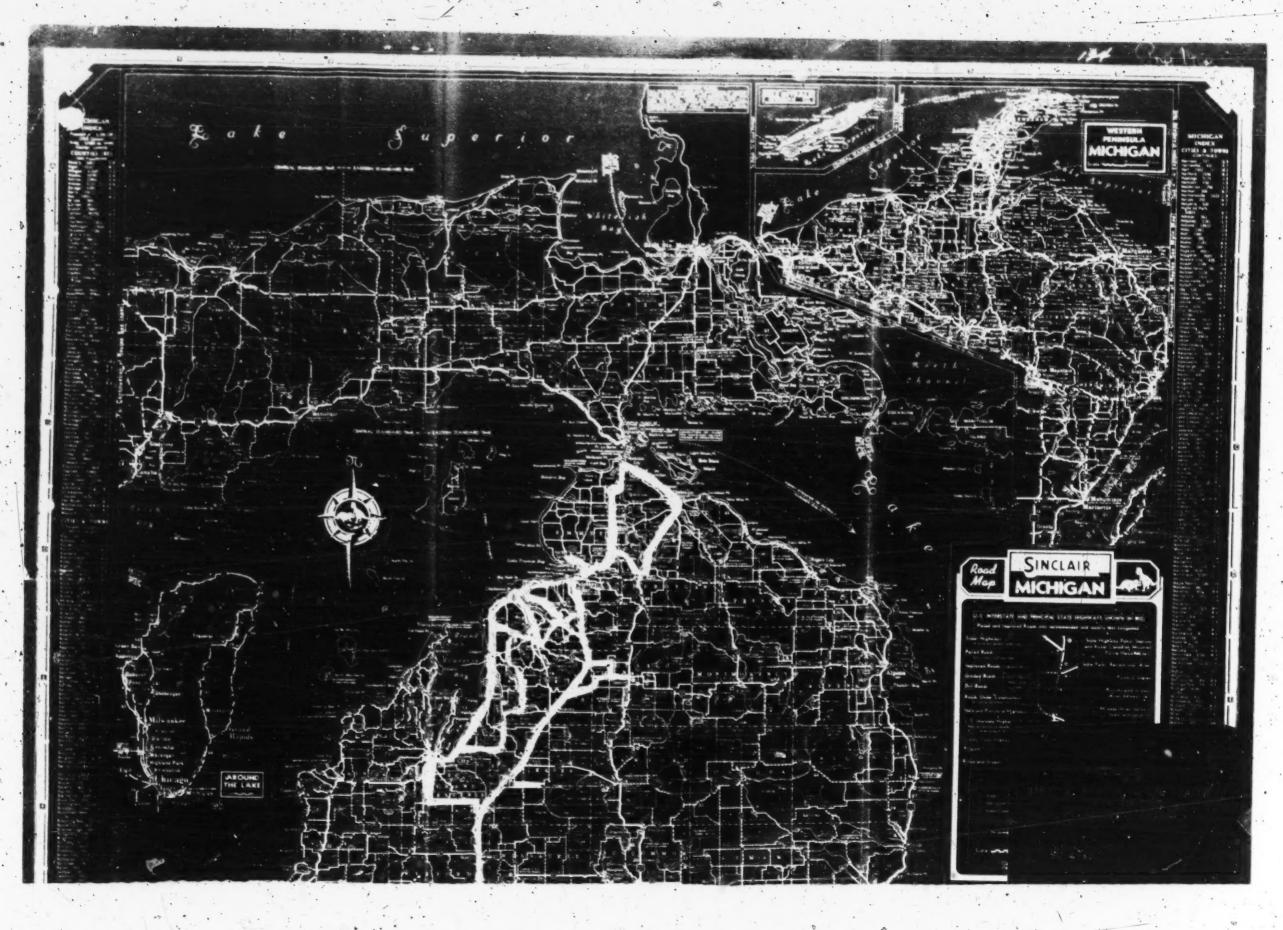
Mr. CLARDY. Whether it is necessary or not.

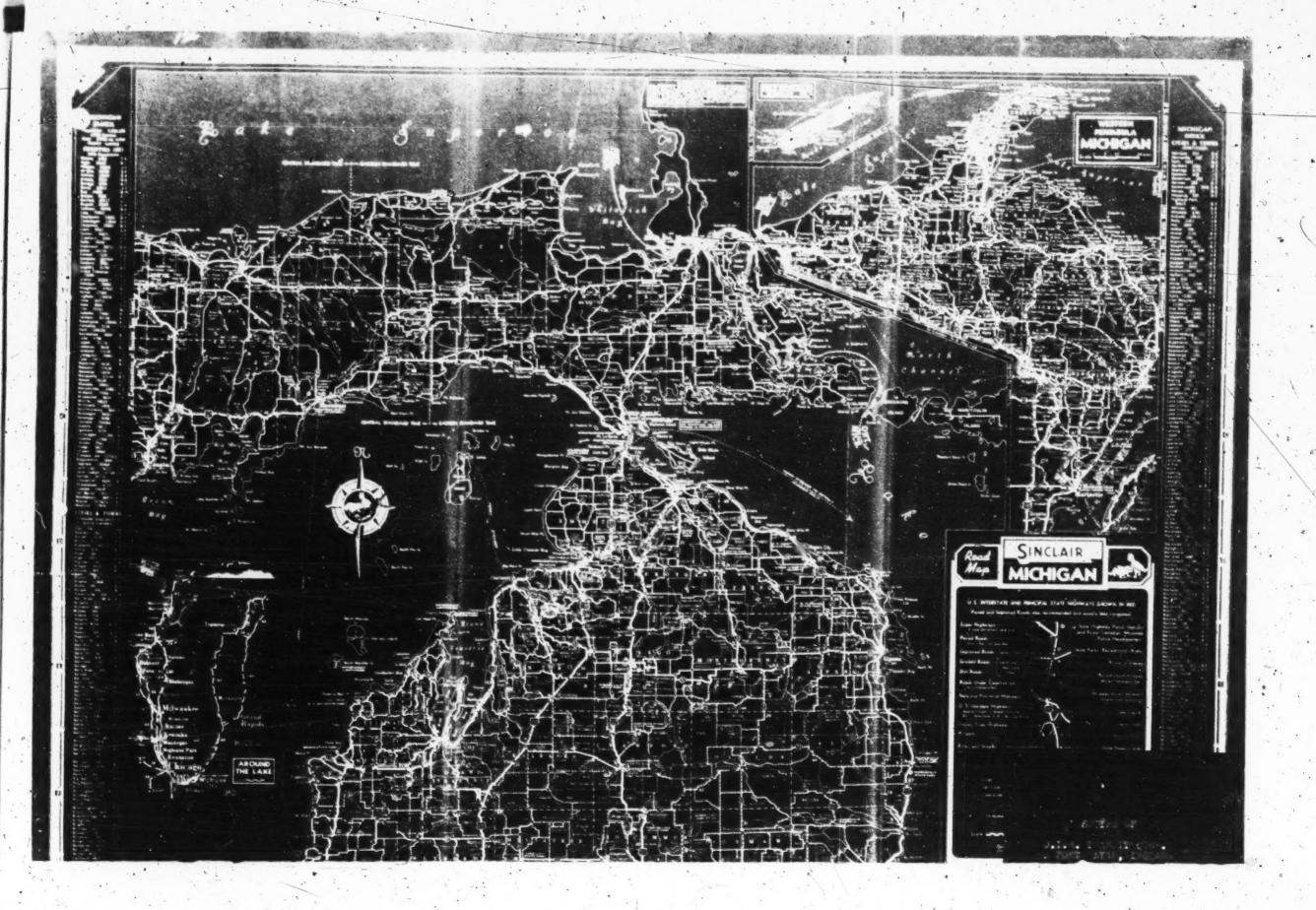
Mr. HARRY YOCKEY. We do not think it is.

Mr. BARKELL. Let the record show, then, Mr. Reporter, that briefs will be due in this case on or before July 15th, 1942. Is there anything further, now, gentlemen? (No response.) If not, the hearing is closed.

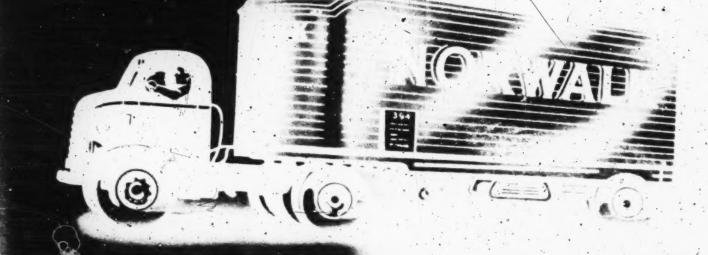
(At 3:55 p. m., June 2, 1942, hearing closed.)

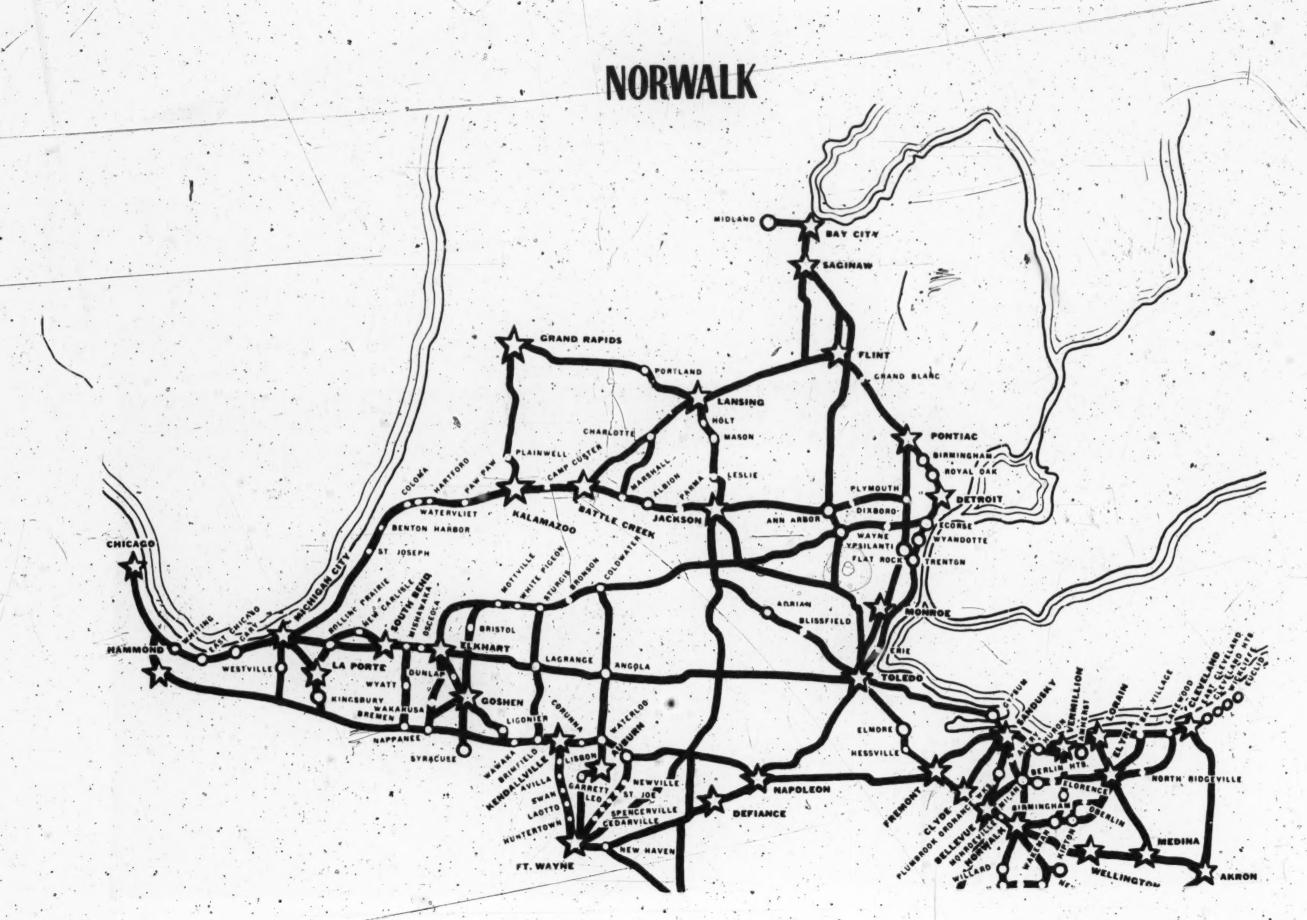






mands Service ... NORWALK
DELIVERS
THE GOODS





INTER-STATE MOTOR FREIGHT SYSTEM

DAILY DIRECT SERVICE

DISTRICT OF COLUMBIA

#Anacostia
#Belleview
#Benning
#Brookland
#Chevy Chase
#Congress Heights
#Georgetown

#Mount Rainier #Tacoma Park • #Washington

OON NECTICUT

Ø#Hartford ⊙#New Haven

DELAWARE

#Wilmington

Alton

ILLINOIS

Argo Auburn Park Austin Belleville Bellewood . Berwyn Beverly Hills Blue Island Bowmansville Breadview Brookfield Burnside Burr Oak Calumet City Chicago Chicago Heights Chicago Lawn Cicero Clearing Colehour

E. St. Louis
Edison Park
Englewood
Evanston
Evergreen Park
Fernwood
Forest Park
Gatewood
Gardners Park
Grand Crossing

Congress Park

Cragin

Dolton

Dunning

OEast Moline

Granite City
Harvey
Hawthorne
Hegewisch
Irondale
Jefferson Park
Kensington
Madison
Mayfair
Maywood
Melrose Park

⊙Moline'
Monsanto
Mont Clare
Morgan Park
Mount Greenwood
Niles Center
Oak Park
Park Ridge
Pullman
Ravenswood
Riverdale
River Forest
'Riverside
*Rockford

○Rock Island
 Rogers Park
 Roseland
 Roxana
 ○South Beloit

South Chicago South Holland Springfield Summit

Venice Washington Heights ؆Waukegan West Pullman Wood River

INDIANA

#Hammond

⊙#Indianapolis

#Indiana Harbor

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#Irvington
   #Jeffersonville
   #Kingsbury
 Ø#Lafayette
   #LaPorte
   #Mars Hill Station
   # Milton
   Mishawaka
  #Moorefield
  #Mount Summit
⊙#Muncie
  #New Albany
   #New Castle
Ø#Richmond .
   Roby
⊙#South Bend
   South Port
  #Speedway-City
⊙#Terre Haute
   Whiting
  #Yorktown
⊙#Bettendorf
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TOWA

O#Davenport

KENTUCKY.

#Beechmont #Bellevue #Covington #Dayton #Erlanger #Fort Mitchell Fort Thomas Highland Park #Latonia O#Louisville #Ludlow #Newport #St. Mathews #Shively

#South Gate

MARYLAND

#Ammendale #Arlington ⊙#Baltimore #Beltsville Berwyn #Bethesda Bladensburg #Branchville #Brentwood #Canton #Capitol Heights *Catonsville #Chevy Chase Clifton Heights #Clifton Park #College Park #Curtis Bay #Elkridge

#Ellicott City

#Essex #Forest Park #Guilford #Gwynn Oak #Halethorne #Highlandtown Howard Park #Hyattsville #Kensington #Lansdowne #Laurel #Locust Point #Mt. Ranier #Mt. Washington #Mt. Winans #Middle River #Muirkirk #Overlea #Pikesville #Point Breeze #Riverdale #St. Dennis #Silver Spring #Sparrows Point #Takoma Park #Towson #Walbrook #Westport #Woodlawn #Allston

MASSACHUSETTS #Arlington #Belmont O#Boston #Brighton #Brookline #Cambridge #Charlestown #Chelséa #Chicopee Falls #Dorchester #East Boston #East Cambridge #Everett #Hyde Park #Indian Orchard #Jamaica Plains #Lexington #Lynn Malden #Medford #Melrose #Milton #Revere #Roxbury #Somerville #South Boston ⊙#Springfield #Waltham #Watertown #Woburn

○#Worcester

MICHIGAN

ØAdrian Albion Algonac

Allen Allendale

Allen Park Almont

Amble Anchorville

OAnn Arbor Argentine Ashton

Augusta Bancroft Barryton

Ratavia 6 % Battle Creek

OBay City Belding OBenton Harbor Berkley

Big Beaver Big Rapids Birch Run

Birmingham Blanchard Blissfield

Bloomfield Hills Borland Bradley Bridgeport

Brighton Bronson Brooklyn

Buchanan Burr Oak Byron **OCadillac**

Cambridge Junction Carrollton Cascade

Cedar Springs Center Line Centerville Ceresco

Charlotte

Cheisea Chrysler Tank Arsenal

Clawson Criq

Clyde Coldwater. Coloma Comstock

Cooper Coopersville

Corinth Corunna

Cutlerville Dearborn Dennison

Howell

Imlay City Inkster

O Detroit

Devereaux De Witt Dimondale

Disco Dixboro

Drayton Plains #Dundee

Durand ? Eagle East Detroit

East Lansing

Eaton Rapids Ecorse Edgerton

Edmore Elm

Eloise Entrican Erie

Essexville Evart Fair Haven

Farmington Fenton

Ferndale Ferrysburg

Flåt Rock · Flint

Fort Custer Fowlerville: Francisco

Frankenmuth Fruitport Galesburg !

Grand Blanc Grand Haven Grand Ledge

3% Grand Rapids Grandville Grass Lake

Grattan Greenville Grosse Pointe Farms

Grosse Pointe Park Crosse Pointe Village Hamburg

Hamtramck Hand Hartford

Hartland Highland Highland Park

Hillsdale ⊙%#Holland Holly

> Holt Howard City

Hudson Naval Arsenal

⊙% Jackson Jonesville ⊙% Kalamazoo Laingsburg Lakeview Langston ⊙% Lansing LaSalle Lawrence Lennon Leoni Leroy Leslie Lima Center. Lincoln Park Linden Lucas †Manistee Maple Hill-Marengo Marine City Marion (Osceola Co.) Marne Marshall Martin Marysville ØMason -McBain McBrides Melvindale Mendon Michigan Center †Midland #Milan Milford Millbrook Millett Moline **ØMonroe** Morley Morrice Moscow Mt. Clemens Mt. Morris †Mt. Pleasant ⊙% Muskegon Muskegon Heights Muttonville Napoleon New-Baltimore New Haven New Hudson #Niles Northville Nottawa Novi Nunica Okemos Onondaga

Oshtemo

Owosso

Ottawa Lake

Palmyra Parchment Paris Parma Paw Paw Pearline Perry Pierson Pine Run Plainwell Pleasant Ridge **OPlymouth** · Pontiac OPort Huron Portland. Potterville Quincy Rattle Run Redford-Reed City Remus Richmond River Rouge Riverview Rives Junction Roberts Landing Rochester Rockford Rockwood Rogers Dam Romeo Rose Center Roseville Royal Oak ⊙Saginaw. St. Chair St. Johns OSt. Joseph Sand Lake Sears Selfridge Field Shelbyville Sibley Sidney Silver Lake Six Lakes Somerset Somerset Center South Rockwood Spring Lake Springport Stanton Stanwood Stoney Corners **ØSturgis** Sylvan Center Taylor Center Tipton Titus Trenton Troy Tustin

Utica Vandercook Lake Van Dyke Vernon Vicksburg Walled Lake Warren Washington Waterford Watervliet Wayland Wayne Webberville Weidman West and Allen Roads (Wayne Co.) West Windsor Whitmore Lake Williamston Willow Run Wixom ' Wyandotte Ypsilanti Zilwaukee

MINNESOTA

#Columbia Heights #Hopkins

⊙#Minneapolis

#Minnesota Transfer #Newport

#North St. Paul #Robbinsdale

#St. Louis Park ⊙#St. Paul

#South St. Paul **#Twin City Ordnance Plant**

MISSOURI

#Anglum #Brentmoore

#Brentwood

#Bridgeton

#Carondelet #Carsonville

#Clayton

#Creve Coeur

#Ferguson

#Glendale

#Greenwood

#Jefferson Barracks

#Jennings

#Kinlock Park

#Kirkwood

#Lakewood

#Lambert Field

#Luxemburg

#Maplewood

#Normandy

#Oakland #Old Orchard

#Overland

#Pattonville

#Pine Lawn

#Ramona Park

#Richmond Heights

#Robertson

⊙#St. Louis

#Shrewsbury

#Tuxedo Park

#University City

#Valley Park

Webster Groves

#Wellston

NEW JERSEY

#Arlington

#Athenia

#Babbitt

#Bayonne

#Baywell.

#Belleville

#Berkley Heights

#Bloomfield

#Bogota

#Bound Brook

#Carlstadt

#Carlton Hill

#Carteret.

#Chrome

#Clifton

#Communipaw

#Coytesville

#Cranford

#Dunnellen

#East Newark

#East Orange

#East Paterson

O#East Rutherford :

#Edgewater

#Elizabeth

#Elizabethport

#Fairview

#Fords

#Forrest Hill

#Fort Lee

#Garfield

#Glen Ridge

#Grantwood

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#Hackensack

Haledon

#Harrison

#Hasbrouck Heights

#Highland Park

Hillside

#Hoboken

#Homestead

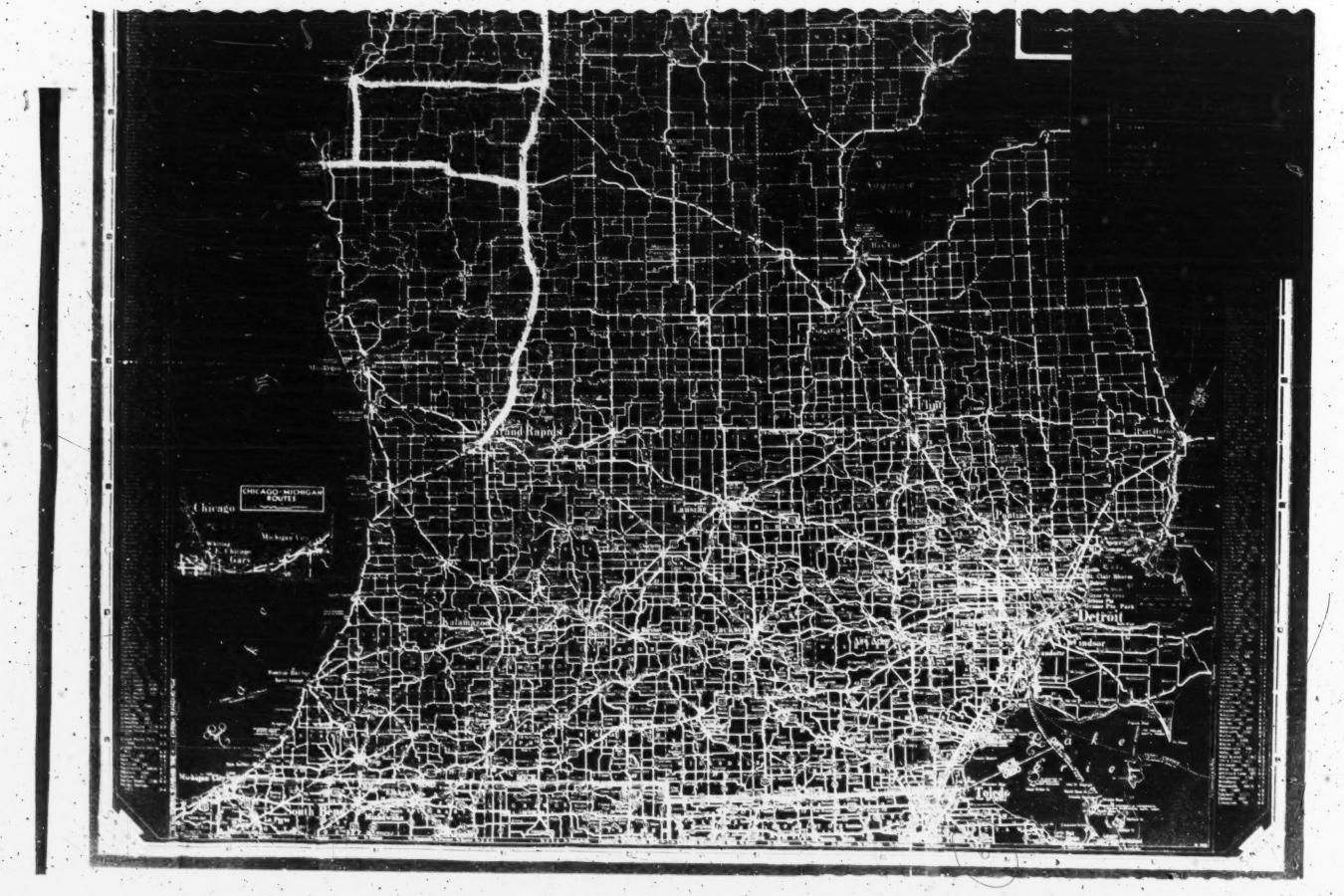
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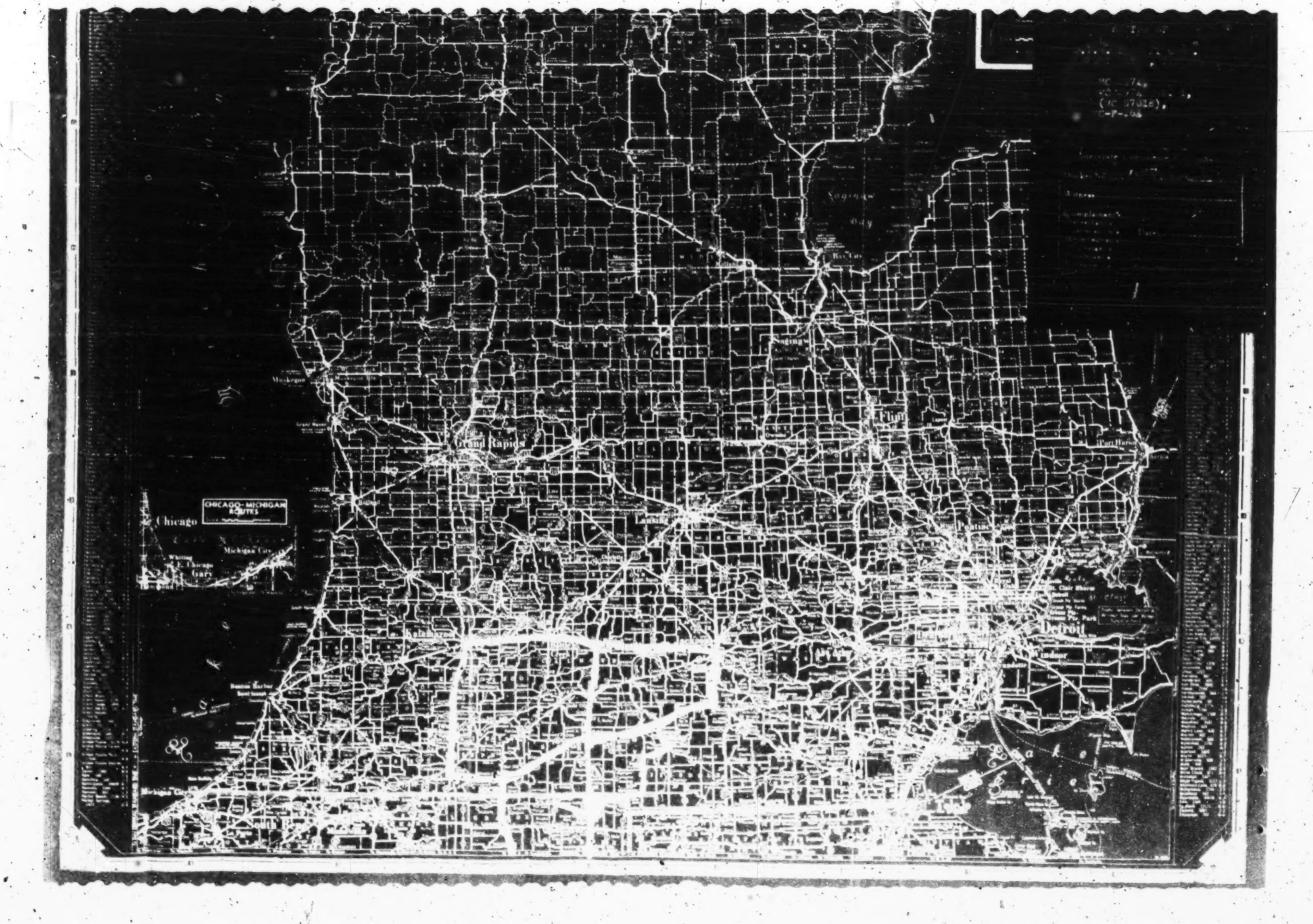
#Jersey City

#Kearney

#Keyport #Leonia

#Linden :





#Little Falls

#Little Ferry #Llewelyn Park

Louli

#Lyndhurst

#Maaville

#Maplewood

Matawan

= Maurer

#Maywood

#Metuchen # Montelair

Morsemere # Xewark

#New Brunswick.

#New Durham.

#North Arlington

#North Bergen

#North Haledon

Nutley .

#Old Bridge #Orange

Palisade

#Palisades Park

Parlin

#Passaje #Paterson

#Perth Aluboy

#Plainfield

#Port Newark

#Rahwar

#Ridgefield #Ridgefield Park

#Rochelle Park

#Roselle

Ibutherford

#Secanons

#South Amboy

#South Orange

#South River

#Teterbore

On #Trenton

#Union

#Union City

#Weehawken

#Westfield

#West Orange

Weadhridge

#Woodridge

NEW YORK

Albany Bay Ridge Bensonhurst Black-Rock Blasdell Bronx Brooklyn Buffalo

Bushwick

Cheektowaga

City Island

Cohoes

.Cortland

Deimar

Depew East Buffalo

East Solvay

East Syrheuse

Echota E'smere

Fayetteville

Green Island

Greenpoint

Harriet

Kenmore Kensington

Lackawanna Lancaster

Lockport

Long Island City

Manhattan

Menands

Munson

New Hartford

New York

ØNiagara Falls North Tonawanda

†Oneida

#Rensselaer

Rochester

†Rome Schenectady

Scotia

Snyder

Solvay Staten Island

OSyracuse

Tonawanda

Troy .

Utica

Waterford

Watervliet

Whitesboro

Whitestone

Williamsville

Wirrlitzer.

OHIO

@#Akron O#Alliance

#Amherst

#Archbold

Ø#Ashland

#Atlas

#Avondale

#Barberton

#Bodford #Boxley

∌ #Bloomdale

#Bond Hill

O#Bowling Green

#Bratenahl

#Brighton Station

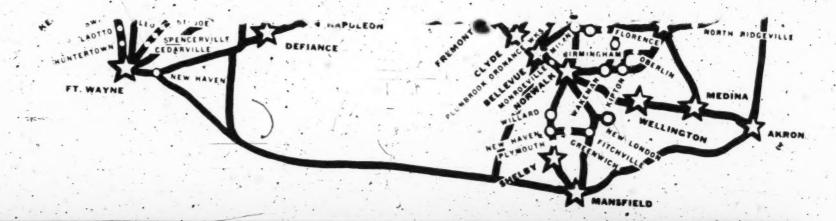
#Brooklyn Heights #Massillon #Brooklyn Heights Village #Mayfield Heights 0 # Bryan # Medina #Camp Chase #Minerva #Campbell #Montpelier #Canton # Moraine #Carthage .# Moraine City #Cheviot #Mt. Airy #Cincinnati #Mt. Auburn #Mt. Healthy #Mt. Lookout #Cleveland #Cleveland Heights #Clintonville #Napoleon College Hill = Navarre #Newburgh Heights #Collinwood #Newburgh Heights Village #Columbus #Cuminsville #Niles #Cuyahoga Falls # North Baltimore =Cuyahoga Heights # North Canton #Cuyahoga Heights Village =Northfield #North Randall #Cygnet #Dalton #North Ridgeville #Dayton #Northside #Deer Park # Norwood #Defiance #Oakley #Ibelta #Orrville #East Canton #Parkman # East Cleveland #Parma = East: Greenville #Perrysburgh #Ellet #Pleasant Ridge #Elmwood Place :#Plumbrooke. Ordnance = Elyria #Port Clinton # Eullid #Price Hill #Euclid Heights #Reading #Euclid Village #Red Bank #Richmond Heights # Evanston-#Fairment #Ridgeville O# Findlay #Riverside OrFostoria #Rocky River 0#Fremont # Rossford #Gartield Heights #St. Bernard #Girard #Sandusky #Grafton #Saylor Park #Grandview # Seliring .#Greentown #Shaker Heights =Groesheck #Sharonville #Gypsum #Silverton . # Hartwell #Smithville # Hyde Park #South Amberst # Ivorydale #Struthers = Kennedy Heights #Stryker. = Lakewood #Swanton O#Lima #S@lvania #Limitale · niftiT#0: ±Linndale Village #Toledo # Uniontown #Lockland OrLorain #University Heights = Louisville #Upper Arlington # Madisonville # Valley View # Malverne #Van Buren O#Mansfield #Vaughan

#Vermillion

#Walnut Hills

= Maple Heights

= Mariemont



DIRECT POINTS served in OHIO, INDIANA, ILLINOIS

from the State of MICHIGAN

OHIO

Bellevue, Ohio Berlin Hts., Ohio Cleveland Hts. Ohi

Butlez Ind. Cedarville, Ind. Dunlap, Ind. East Chicago, Ind. Collins, Ohio East Cleveland, Ohio Elmore, Ohio Elyria Ohio Euclid: Ohio Fitchville, Ohio Florence, Ohio Fremont, Ohio Greenwich: Ohio Hessville, Ohio Huron, Ohio

Kipton, Ohio Lakewood, Ohio Lorain, Ohio Mansfield, Ohio Medina, Onio Milan, Ohio Monroeville, Ohio Napoleon. Ohio New London, Ohio North Ridgeville, Ohio Norwalk, Ohio Oberlin, Ohio INDIANA

Fort Wayne, Ind. Gary. Ind. Huntertown, Ind. Indiana Harbor, Ind. Hammond, Ind. Kendallville, Ind. Kingsbury, Ind. Laotto, Ind.

La Porte, Ind. Leo. Ind. Ligonier, Ind. Lisbon, Ind. Michigan City, Ind. Mishawaka, Ind. Nappanee, Ind. New Carlisle, Ind. New Haven, Ind. Newville, Ind. Osceola, Ind.

ILLINOIS

Chicago, Ill.

Sandusky Ohio Shelby Ohio South Amherst. Ohio Toledo Ohio Townsend, Ohio Vermillion, Ohio Wakeman Ohio Westlake, Ohio Wellington, Ohio Wickliffe, Ohio Willard Ohio

Plumbrook Ord. Works

Rolling Prairie. Ind. St Ice, Ind. South Bend, Ind Spencervule Ind. Syracuse, Ind. Swan Ind. Wakarusa, Ind. Waterloo, Ind. Wawaka, Ind. Whiting, Ind. Wyatt, Ind.

Harvey, Ill.

* Terminal

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Ø#Warren
    #Warrensville Heights
    #Wauseon
    #Welshfield
    #West Park
    #Westwood
    #Wickeliff
    #Winton Place
  Ø#Wooster ,
    #Wyoming
  Ø#Youngstown
PENNSYLVANIA
   * # Aspinwall
   *#Avalon-
  *#Beechview
   #Bellevue
   #Ben Avon
   #Blackhawk
   #Bloomfield
   #Braddock
   #Bridesburg
   #Bridgeville
   #Burholme
    #Bustletown
   #Byberry
  *#Carnegie
   #Carrick
   #Chestnut Hill
   #Coraopolis
   #Crafton
   #Crescentville
   #Dixmont
   #Dormont
  *#Duquesne
  *#East Liberty
  *#East Pittsburgh
  *#Edgewood
  *#Emsworth
 ⊙#Erie
  *#Ecna
   #Fern Rock
   #Fox Chase
   #Frankford
   #Germantown
   #Girard Point
  *#Glassport
 *#Glenfield
 ##Glenshaw
   #Greenwich Point
 *#Harmarville
 Ø#Harrisburg
 *# Hays
 *#Haysville
 ##Hazelwood
   #Holmesburg
 *#Homestend
  #Kensington
  #LaMott
 *#Large
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#Lawndale

#Logan

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· #Manayunk
    *#McKeesport
    *#McKees Rocks
     # Milbourne
    *#Milvale
    #Mt. Airy
*#Mt. Lebanon
    *#Mt. Oliver
    *#Munhall
    *#Neville Island
   Ø#New Cumberland
    *#North Braddock
     #Oak Lane
     #Oakmont
     #Olney
     #Overbrook
     #Pencoyd
   *#Perrysville
   ⊙#Philadelphia
    #Pitcairn
   O#Pittsburgh
     #Point Breeze
     #Port Richmond
   #Rankin
    #Roxborough
   *#Shadyside
   *#Sharpsburg
    #Somerton
    #Southside
   #Summerdale
*#Swissvale
    #Tabor
    #Tacony
    #Thornburg
    #Tioga
    #Torresdale
   #Turtle Creek
    #U. S. Navy Yard
   *#Verona
   *#West End
   *#West View
   *#Whitaker
   *#Wilkinsburg
    #Wissinoming
RHODE ISLAND
  Ø#Providence
VIRGINIA
    #Arlington
WISCONSIN
    #Allis
 ⊙#Beloit
    #Cudaby
    #Fox Point
  #&Janesville
 Ø#tKenosha
    #Layton Park
 ⊙#Milwaukee
   #North Milwankee
  Ø#†Racine
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#St. Francis *#Shorewood

#South Milwaukee

#Wanwatosa

#West Allis #West Milwaukee #Whiterish Bay

Leger.d .- Terminal. Truckload only handled direct. traffic only. % Refrigerator service from Chicago, Ill. & Direct service limited to shipments of 10,000 lbs. or more. † Direct service on interstate shipments of 5,000 lbs. or more. Ø Cartage point.

Consult our Terminal Managers or Brawn Sproul, General Traffic Manager, 2866 Penobscot Bidg., Detroit, Mich., for information on various other points

Receivers of Export and Import Freight for Judson-Sheldon Corp., Foreign Freight Forwarders.

1133

Exhibit No. 21

This Agreement, made this First day of November 1941, between the Pennsylvania Railroad Company, hereinafter called "Railroad" party of the first part, and The Willett Company of Indiana, Inc., of Indianapolis, Indiana, hereinafter called

"Trucker", party of the second part, witnesseth:

That, in consideration of the terms and conditions hereinafter set forth to be observed and performed by each of the parties hereto, it is mutually covenanted, stipulated and agreed by the parties hereto as follows:

First: Trucker, who is engaged in the trucking business as an

original private and independent contractor, agrees:

(1) To accept from Railroad at its stations in the following cities and towns in the States of Indiana and Michigan: Ft. Wayne, Ind., Kendallville, Ind., Rome City, Ind., Wolcottville, Ind., LaGrange, Ind., Howe, Ind., Sturgis, Mich., Nottawa, Mich., Mondon, Mich., Vicksburg, Mich., Kalamazoo, Mich., all less-thancarload freight, as well as mail, and express (all hereinafter referred to as "freight"), offered by Railroad to Trucker, and safely to transport and deliver it at the stations of Railroad in said cities and towns, including loading and unfoading Trucker's vehicles and incidental collection from and delivery to the premises of Railroad's patrons; all to the satisfaction of Railroad.

(2) To secure and deliver proper receipts and shipping documents and also to collect and deliver all charges and amounts due with respect to such freight; also to accept from Railroad, safely transport, and deliver such other funds as may be delivered to Trucker from time to time by the authorized representative of

Railroad; all to the satisfaction of Railroad.

(3) That no portion of the money paid to Trucker for services under this agreement, shall, by any device or arrangement whatsoever, be directly or indirectly paid or refunded to any shipper, consignee or any one whomsover in any way interested in the freight handled or transported under this agreement.

(4) To comply strictly at all times with the Railroad's rule and regulations and with its duly filed tariffs and supplement thereto and reissues thereof, and with all other rules, regulation and tariffs and all laws applicable to operations and service to be

performed by Trucker hereunder.

(5) To be responsible for, and to protect, save harmless and in demnify Railroad from and against, all fines, penalties, loss, danage, cost and expense suffered or sustained by Railroad or far which Railroad may be held or become liable by reason of the loss or destruction of or damage or delay to property and freight in the handling, collection or delivery thereof hereunder, or loss or destruction of or damage or delay to property and freight while said property or freight is in Trucker's care, custody or possession hereunder; (b) injury (including death) to persons on property or other causes whatsoever, in the event an attempt should be made to hold Railroad liable therefor, in connection with Trucker's business or operations hereunder; (c) violation of any law, rule or

regulation of public authority with respect to the services of 1134 Trucker hereunder; (d) the issuance of any false or fraudulent bills of lading or the giving or receiving of any false of fraudulent receipts for any freight by Trucker, or by Trucker

agents, servants or employees; (e) failure of Trucker to make elections and remittances to Railroad as provided in this agreement, and (f) theft, embezzlement, defalcation, misrepresentation or falsification by any device whatsoever on the part of Trucker

or Trucker's agents, servants or employes.

(6) At Trucker's own expense to provide for insurance or other wise, in an amount, in a manner, and with a company satisfactor to Railroad, fully to meet the requirements of any compensation act, plan, or legislative enactment in connection with the death disability, or injury of Trucker, Trucker's officers, agents, or eng ployees arising either directly or indirectly out of the work of services to be performed hereunder, also Trucker's legal liability for death of or disability or injury to third parties and damage to property of third parties; and Trucker admits, and accepts exclusive responsibility on Trucker's part for any and all taxe. contributions, or any payment whatever for old age or other persions, unemployment compensation insurance, annuities, or any benefits whatever of a social security nature imposed now, or here after, by any State or Federal statute or authority, or arising thereunder with respect to Trucker, Trucker's employees, or their wages, salaries, or other remuneration or compensation.

(7) At Trucker's own expense to provide for bonds with corporate surety satisfactory to Railroad, fully to indemnify Railroad against theft, embezzlement, defalcation, misrepresentation,

or falsification on the part of Trucker's agents, servants, or em-

ployees.

(8) Railroad shall have the right to examine the accounts, records, books, and papers of Trucker pertaining in any way to operations or conditions incident to the service to be performed by Trucker hereunder.

(9) That neither this contract nor any of the work to be performed by Trucker hereunder shall be assigned, transferred, or sublet by Trucker, in whole or in part, without written consent of

Railroad first had and obtained.

. Second: Railroad agrees:

(1) To pay Trucker, in full for the transportation and handling of freight and all other services rendered by Trucker hereunder, as follows:

(a) For a tractor and semitrailer with a maximum carrying capacity of seven tons at the rate of Three Hundred Thirty Five dollars (\$335.00) per calendar month and in addition Six cents (6¢) per mile actually operated in said service as registered by a reliable meter.

(b) For equipment substituted by Trucker, when the regular equipment used in this service is temporarily withdrawn for repairs or for other reasons, Railroad will make the same payment

as if the regular equipment has been used.

(c) For extra equipment, which may be hired by Trucker fo meet the needs of said service from time to time when directed by the authorized representative of Railroad, Railroad will reimburse Trucker for the actual amount paid by Trucker for the hire of said extra equipment.

5 Third: It is mutually agreed that this Agreement shall

In witness whereof, the parties hereto have caused this Agreement to be duly executed the day and year first hereinbefore

written.

THE PENNSYLVANIA RAILROAD COMPANY, By J. M. SYMES, General Manager.

P. J. HARGES.

THE WILLETT COMPANY OF INDIANA, INC., By Jos. P. McArdle, Vice President.

B. B. Young.

1136

INTERSTATE COMMERCE COMMISSION

Served Sept. 14, 1942

NOTICE TO THE PARTIES

Exceptions, if any, must be filed with the Secretary, Interstate Commerce Commission, Washington, D. C., and served on all other parties in interest, within 20 days from the date of service shown above, or within such further period as may be authorized for the filing of such exceptions. Otherwise, at the expiration of said period for the filing of exceptions, the attached order will become the order of the Commission and will become effective unless exceptions have been seasonably filed by other parties, or the order has been stayed or postponed by the Commission.

Any new operation to be authorized by the recommended order herein if it becomes effective may not be commenced until such time as the certificate, the issuance of which will have been authorized upon compliance with provisions of the Interstate Commerce Act and rules thereunder, has actually been issued. Futhermore, it should not be assumed that the order recommended has become effective as the order of the Commission until such time as a notice to that effect, signed by the Secretary of the Commission, has been received.

No. MC-2815 (Sub-No. 6)

THE WILLETT COMPANY OF INDIANA, INC., EXTENSION—FORT WAYNE, IND., MACINAW CITY, MICH.

Submitted		Decided	
Submitted	-	Decided	

Public convenience and necessity found to require operation subject to certain conditions, by applicant as a common carrier by motor vehicle, in interstate or foreign commerce, of general commodities, over specified routes, between Fort Wayne, Ind., and Macinaw City, Mich., serving intermediate and off-route points which are stations on the rail line of the Pennsylvania Railroad Company. Issuance of a certificate, subject to conditions, approved upon compliance by applicant with certain requirements

Harry E. Yockey, Kirkwood Yockey, and Earl W. Munshaw for

applicant.

Claude H. Anderson, K. F. Clardy, Robert Des Roches, Fred I. King, George O. Cowan, W. J. Guenther, and Frank C. Devlin for protestants.

Oscar Lindstrand for intervener supporting applicant.

Report and order

Recommended by Walter W. Bryan, Examiner

By application filed September 8, 1941, the Willett Company of Indiana, Inc., of Chicago, Ill., seeks a certificate of public convenience and necessity authorizing extension of operations in interstate or foreign commerce, as a common carrier by motor vehicle of general commodities, between Fort Wayne, Ind., and Macinaw City, Mich., serving the intermediate and offroute points which are stations on the rail line of the Pennsylvania Railroad Company and over the routes set forth in the appendix.

The application was referred to joint board No. 23 for hearing and recommendation of an appropriate order thereon. The joint board having failed to agree as to its recommendations, the matter has been duly referred to the examiner for further appropriate proceedings. Hearing was held on February 10 and 11, 1942, at Indianapolis, Ind., and June 1 and 2, 1942, at Lansing, Mich. Certain motor carriers operating in the affected territory

oppose the granting of the application.

Applicant was organized in 1934 under the laws of Indiana. Its entire capital stock is owned by the American Contract & Trust Company, a wholly owned subsidiary of the Pennsylvania Rail-

road Company, hereinafter termed the railroad.

Pursuant to its "grandfather" application in No. MC-2815 and authority granted in Willett Company of Indiana, Inc., Extension-Ill., Ind., and Ky., 21. M. C. C. 405; also by a certificate issued to it in No. MC-2815' (Sub-Nos. 3, 4, and 5), applicant now performs a common carrier service transporting general commodities over highways paralleling the railroad, and serves only stations on the rail line of the railroad. All shipments move under bills of lading issued by the railroad and the service is confined to transportation which is auxiliary to and supplemental of the rail service. The existing authority embraces routes over highways paralleling many of the railroad's routes in Indiana, including service to some of the larger points, such as South Bend, Fort Wayne, Logansport, Indianapolis, and Terre Haute, Ind., also service to Chicago, Ill., Louisville, Ky., and St. Louis, Mo. The proposed routes connect with applicant's existing routes at Fort Wayne.

Applicant proposes herein to transport by motor vehicle lessthan-carload freight originating on the lines of the railroad or its connections and proposes a service which is auxiliary to and supplemental of the rail service now being rendered by the railroad on its various lines extending from Fort Wayne through

Kalamazoo to Grand Rapids, thence north of Grand Rapids to Macinaw City. The above-mentioned traffic will be transported by rail between key or break-bulk stations and thence by truck to the intermediate or way stations. Conversely, applicant would collect freight at the way stations and transport it to the key stations for movement beyond by rail.

Operations would be conducted daily, except Sunday under regular schedules coordinated with those of the railroad. The railroad would assume responsibility to the shipper for the transportation of the freight throughout the entire movement. The railroad would issue bills of lading, publish rates, collect all charges, adjust claims, solicit traffic and contact the public.

The proposed operation will be conducted in the same manner and under the same conditions as those operations now conducted by applicant over its present authorized routes.

all of which were considered and discussed at some length by the Commission, division 5, in Willett Company of In-

diana, Inc., Extension—Ill., Ind., and Ky., supra, and, therefore, no further discussion along this line is necessary. However, in the above-mentioned case, division 5 attached certain conditions to the authority granted with a view of insuring that the authorized transportation would not be a duplication of and in competition with existing highway service. One of these conditions was as follows:

Shipments transported by applicant shall be limited to those which it receives from or delivers to the railroad under a through bill of lading covering, in addition to movement by applicant, a

prior or subsequent movement by rail.

The above condition had been imposed by division 5 in granting a motor carrier authority to perform a service auxiliary to and supplemental of rail service in Kansas City S. Transport Co., Inc., Com. Car. Application, 10 M. C. C. 221. Subsequently, upon oral argument in the latter proceeding, 28 M. C. C. 5, the Commission modified these requirements to permit the motor carrier to transport traffic which had not received a prior or subsequent rail haul.

In th instant case, the railroad proposes to establish two key points, namely, Fort Wayne and Grand Rapids, as points of distribution of its less-than-carload freight. The rail service between and into these two points is frequent and the amount of tonnage is heavy, whereas the points intermediate thereto receive less tonnage and less frequent service. This is likewise true to the points north of Grand Rapids, with the exception of Cadillac, Traverse City, and Petoskey. All of the points north of Grand Rapids are small towns ranging from populations of 200 to 1,500. The present rail service into these points is very

infrequent. To some points it is an every-other-day service and to other points it is a tri-weekly service. It is the purpose of the proposed operation to render a more frequent and faster service

to the above points by motor vehicle.

The railroad will continue its rail service to all of these points in transporting carload freight but will discontinue the operation of the "peddlar car" on the local freight trains. By eliminating the "peddlar cars" it will enable the railroad to release a number of rail cars to be used in through-train service; will also enable the railroad to reduce its transit time to the various ways stations from 24 to 48 hours; will eliminate over 61,000 car-miles per month; will increase the efficiency of the railroad by eliminating the expense of switching the "peddlar cars" to and from the freight platform; and will result in heavier loading of cars by the consolidation of less-than-carload shipments into one car for each key point. The above efficiency in operation will be accomplished without adversely affecting the employees of the railroad.

Supplementing the evidence of applicant and railroad employees, 42 shipper witnesses representing various businesses at points located on the proposed routes testified as to the necessity for and the convenience of the considered services.

sity for and the convenience of the considered services.

1139 In substance, their testimony is that they are now using the rail service in both carload and less-than-carload shipments. The present rail service on less-than-carload shipments is slow and the witnesses state that if the service proposed herein would expedite the movement of these less-than-carload shipments to their places of business, then such service would be a

decided convenience and necessity to them. '

Various protestant motor carriers submitted evidence showing that their routes of operation parallel or traverse certain of the routes of applicant and that they serve practically all of the points on such routes. They assert that their present facilities and services are adequate and efficient and that they are able, ready, and willing to supplement their present equipment and facilities if traffic requirements should demand. They contend that they are willing to coordinate their services with the railroad in rendering the proposed service, but that the railroad has not seen fit to secure their services in coordinated rail and motor service between the points involved here, and they take the position that the existing motor carriers in the considered territory should be afforded opportunity to improve their present services and facilities before authorization for new service is granted. dence indicates that there are at least four motor carriers rendering a daily service between most of the points here involved. addition to the testimony of the above witnesses for protestants, 15 shipper witnesses representing various businesses at points

located on the proposed routes, principally north of Grand Rapids, testified in support of the protestant motor carriers and in substance stated that they were now using both rail and motor carriers for their transportation needs. However, the majority of these shippers were using largely motor carrier service. They testified that the present services were satisfactory and they were not seeking additional transportation services.

Similar contentions on the part of protestants have been advanced in other like cases before the Commission. Especially in the Kansas City Southern case, supra, and what the Commission

stated in that decision should apply equally well here.

Upon consideration of all evidence of record, the examiner concludes that the record amply warrants the granting of the authority sought subject to the conditions imposed by the Commission in Kansas City S. Transport Co., Inc., Com. Car. Application, supra.

The examiner finds that present and future public convenience and necessity require operation by applicant as a common carrier by motor vehicle, in interstate or foreign commerce, of general commodities, between the points and over the routes shown in the appendix attached hereto and made a part hereof, serving intermediate and off-route points which are stations on the rail line of the Pennsylvania Railroad Company, as indicated in the appendix, subject to the following conditions:

1. The service to be performed by applicant shall be limited to service which is auxiliary to, or supplemental of, rail service of the Pennsylvania Railroad Company, hereinafter called the

railroad.

1140 2. Applicant shall not serve any point not a station on a rail line of the railroad.

3. No shipments shall be transported by applicant as a common carrier by motor vehicle between any of the following points or through or to or from more than one of said points: Fort Wayne, Ind., and Grand Rapids, Mich.

4. All contractual arrangements between applicant railroad and the American Contract & Trust Company shall be reported to the Commission and shall be subject to revision, if and as the Commission may find it to be necessary in order that such arrangements shall be fair and equitable to the parties.

5. Such further specific conditions as the Commission in the future may find it necessary to impose in order to restrict applicant's operation to service which is auxiliary to, or supplemental

of, rail service.

The examiner further finds that applicant is fit, willing, and able properly to perform such service and to conform to the previsions of the act and the requirements, rules, and regulations of

the Commission thereunder; and that an appropriate certificate should be granted subject to the above conditions.

In view of the findings herein, the examiner recommends that

the appended order be entered.

By Walter W. Bryan, Examiner.

(Signature) WALTER W. BRYAN.

1141

APPENDIX

PROPOSED ROUTES

Route No. 1: Between Fort Wayne, Ind., and Grand Rapids, Mich.: From Fort Wayne over Indiana Highway 3 to Kendall-ville, Ind., thence over U. S. Highway 6 to junction with Indiana Highway 9; thence over Indiana Highway 9 to junction with Michigan Highway 78; thence over Michigan Highway 78 to junction with Michigan Highway 86, near Nottawa; thence over Michigan Highway 86 to Nottawa; thence over County Roads, through Mendon and Vicksburg to junction with U. S. Highway 131 at Schoolcraft; thence over U. S. Highway 131 to Grand Rapids. Return over the same route.

Intermediate points to be served: Wallen, Huntertown, La Otto, Avilla, Kendallville, Rome City, Wolcottville, LaGrange, and Howe, Ind., Sturgis; Nottawa, Mendon, Vicksburg, Kalamazoo, County Spur, Plainwell, Martin, Shelbyville, Wayland, and Mo-

line, Mich. No off-route points to be served.

Route No. 1a: From Kendallville to Rome City, Ind., over County Roads. No service to intermediate or off-route points.

Route No. 1b: From Nottawa, Mich., over Michigan Highway 86 to Three Rivers, thence over U. S. Highway 131 to School raft,

Mich. No service to intermediate or off-route points.

Route No. 2: Between Grand Rapids and Cadillac, Mich. From Grand Rapids over U. S. Highway 131 to Cadillac, and return over the same route. Intermediate points to be served: Rockford, Cedar Springs, Sand Lake, Pierson, Howar I City, Morley, Stanwood, Big Rapids, Paris, Reed City, Orono, Ashton, and LeRoy, Mich. Off-route point to be served. Tustin.

Route No. 2a: From Grand Rapids over County Roads, through Comstock Park and Belmont to junction with U. S. Highway 131 north of Grand Rapids. Intermediate point to be served; Bel-

mont. No off-route points to be served.

1142 Route No. 3: Between Cadillac and Mackinaw City, Mich.: From Cadillac over U. S. Highway 131 to Petoskey, thence over U. S. Highway 31 to Mackinaw City, and return over the same route. Intermediate points to be served: Manton, Fife Lake, Kalkaska, Antrim, Mancelona, Alba, Boyne Falls, Petoskey,

Bay View, Conway, Oden, Alanson, Brutus, Pellston, Levering, and Carp Lake, Mich. Off-route points to be served: South Board.

man, Elmira and Walloon Lake.

Route No. 3a: From the junction of U. S. Highway 31 and Michigan Highway 131 north of Bay View, thence over Michigan Highway 131 to Harbor Springs, thence over Michigan Highway 131 and County Roads to Conway, Mich. Intermediate points to be served: Kegomic, Wequetonsing and Harbor Springs, Mich.

No off-route points to be served.

Route No. 4: Between Cadillac and Traverse City, Mich.: From Cadillac over U. S. Highway 131 to Walton, there ever County Roads to Summit City, thence over County Road to junction with Michigan Highway 113, thence over Michigan Highway 113 to Kingsley, thence over County Road to Mayfield, and return over the same route to Kingsley, thence over Michigan Highway 113 to junction with Michigan Highway 37, thence over Michigan Highway 37 to the junction with U. S. Highway 31, thence over U. S. Highway 31 to Traverse City, and return over the same route Intermediate points to be served: Manton; Walton, Summit City, Kingsley, and Mayfield. No off-route points to be served.

Route No. 4a: From Walton over Michigan Highway 113 to junction with Michigan Highway 37, thence over Michigan Highway 37 to junction with U. S. Highway 31, thence over U. S. Highway 31 to Traverse City. No service to intermediate or off-route

points.

Route No. 5: Between Cadillac and Falmouth, Michael From Cadillac over Michigan Highway 55 to Lake City, thence over Michigan Highway 55 and County Roads to Falmouth, and return over the same route. Intermediate points to be served: Lake City. No off-route points to be served.

Route No. 5a: From Cadillac over Michigan Highway 55 and County Roads through Lucas to Falmouth. No service to inter-

mediate or off-route points.

Route No. 6: Between Grand Rapids and Muskegon, Mich. From Grand Rapids over U. S. Highway 16 to Coopersville, thence over County Roads, through Conklin, Ravenna, and Sullivan to junction with Michigan Highway 46, thence over Michigan Highway 46 to junction with U. S. Highway 31, thence over U. S. Highway 31 to Muskegon, and return over the same route Intermediate points to be served: Ravenna and Conklin. No off-route points to be served.

Route No. 6a: From Grand Rapids to Muskegon over U.S. Highway 16. No service to intermediate or off-route points.

Route No. 7; Between Lake City and Manton, Mich.: From Lake City over Michigan Highway 66 to its junction with Michigan Highway 42, thence over Michigan Highway 42 to Manton and return over the same route. No service to intermediate or offroute points.

1144 Recommended by Walter W. Byran, Examiner.

(Signature) WALTER W. BRYAN.

ORDER

At a Session of the Interstate Commerce Commission, Division 5, held at its office in Washington, D. C., on the day of _____, A. D. 1942

No. MC-2815 (Sub-No. 6)

THE WILLETT COMPANY OF INDIANA, INC., EXTENSION—FORT WAYNE, IND., MACKINAW CITY, MICH.

Investigation of the matters and things involved in this proceeding having been made, said application upon due notice having been heard by joint board No. 23 and duly referred to the examiner, who has made and filed a report herein containing his findings of fact and conclusions thereon, which report is hereby made a part hereof, and said proceeding having been duly submitted:

It is ordered, that upon full compliance with all requirements of sections 215 and 217 of the Interstate Commerce Act, and with the rules and regulations thereunder, a certificate be issued to applicant authorizing operation, in interstate or foreign commerce, as a common carrier by motor vehicle of the commodities described, and in the manner described in the findings in said report.

It is further ordered, that the application in all other respects

be, and it is hereby, denied.

And it is further ordered, that this order shall be effective

By the Commission, division 5.

[SEAL]

1145

W. P. BARTEL, Secretary.

ORDER

INTERSTATE COMMERCE COMMISSION

No. MC 2815 (Sub No. 6)

THE WILLEIT COMPANY OF INDIANA, INC., EXTENSION—FORT WAYNE, IND., MACINAW CITY, MICH., CHICAGO, ILL.

In the matter of request for postponement of date for the filing of exceptions to the recommended order.

Present: William E. Lee, Commissioner, to whom the above-entitled matter has been assigned for action thereon.

Upon consideration of the record in the above-entitled case and

upon consideration of said request:

It is ordered, that the date for the filing of exceptions to the recommended order of the examiner be, and it is hereby, extended to October 31, 1942.

Dated at Washington, D. C., this 21st day of September A. D.

1942.

By the Commission, Commissioner Lee.

W. P. BARTEL, Secretary.

1148 Before the Interstate Commerce Commission

MS 2815-Sub. No. 6

IN THE MATTER OF THE APPLICATION OF THE WILLETT COMPANY OF LINDIANA, INC., EXTENSION FORT WAYNE-MACKINAW CITY

Exceptions of Protestants Inter-State Motor Freight System and Parker Motor Freight

Oct. 29, 1942

· (Figures in parentheses refer to pages of the printed record,

except as the context clearly indicates otherwise.)

Now come the protestants, Inter-State Motor Freight System and Parker Motor Freight and except to the proposed Report and Order in the above entitled proceeding in the following particulars:

1. The factual findings of the Examiner with respect to what is sought and the manner in which the operations will be conducted are generally entirely in error. Specification of the particular errors will be made in the discussion under this heading.

2. The finding by the Examiner that:

"Supplementing the evidence of applicant and railroad employees forty-two shipper witnesses representing various businesses at points located on the proposed routes testified as to the necessity for and the convenience of the considered services." (Sheet 3)

3. The finding of the Examiner set forth on Sheet 4 that these witnesses testified that "Such service would be a decided con-

venience to them."

4. The statements by the Examiner on Sheets Two and Three that he gave consideration to another application by this applicant and that facts in that case were partially responsible for the determination of the issues in this case.

5. The Examiner's error in excluding the limitation heretofore imposed on the railroad by giving consideration to facts of record in other cases but upon which there was no showing in this case, as set forth on Sheet Three.

6. The finding of the Examiner that the protestants "take the position that the existing motor carriers in the considered territory should be afforded opportunity to improve their present service and facilities before authorization for new service is granted."

7. The finding and conclusion of the Examiner as set forth on

Sheet 4 that:

"Upon consideration of all evidence of record, the Examiner concludes that the record amply warrants the granting of the authority sought subject to the conditions imposed by the Commission in Kans: City Southern Transport Company, Inc., Common Carrier application, supra."

8. The Examiner's failure to give any weight whatsoever to the undisputed evidence that there are sufficient carriers already in the field presently furnishing the same sort of service to the Pere Marquette Railroad and who could also furnish such service to the

Pennsylvania Railroad in this case.

9. The Examiner's finding in general that the proposed authority is warranted despite the fact that the record is without any supporting evidence whatsoever going to show that the public convenience and necessity actually requires the service. These protestants have been denied due process in many particulars.

10. The grant is based on a discriminatory application of the

statute.

11. The many errors of the Joint Board in admitting and rejecting evidence noted and discussed in our brief were not mentioned and no factual findings were made on any of the many important points thus raised in the trial of the proceedings.

12. The failure of the proposed report to limit the authority

to less truck load traffic.

DISCUSSION

The matter now brought to the attention of the Commission in these exceptions deals with an application made by the Willett Company of Indiana, a subsidiary corporation of the Pennsylvania Railroad. Inasmuch as we filed a rather long brief bearing date of August 6th, together with a supplement dated August 19th, 1942, we will not burden these exceptions with a repetition of the things there set forth. In discussing the various points set out below we pray reference to that brief and its supplement and now specifically incorporate those documents in and make them a part of these exceptions for the purpose of conserving the time of the Commission and saving paper and expense.

Briefly, this is an instance in which the railroad is seeking to have its wholly owned subsidiary truck line inaugurate a new motor carrier service over routes already served by a number of motor carriers. In making its case the railroad has relied completely on its repeatedly announced statement that they need only show that it—the railroad—will benefit in order to justify the grant of authority to its subsidiary. It has taken the position that it need only present proof to show that the railroad claimed that some benefits would accrue to it. Our brief and the exceptions discussed herein will amplify and explain this proposition.

The protestants have presented uncontradicted proof that they could and would furnish the precise kind of service sought if the railroad desired them to do so. That they are presently furnishing that precise kind of service to another railroad. The arbitrary refusal of the railroad to entertain the protestants proposal is fully discussed in our brief. The case has been decided wholly on the basis of the Examiner's belief that the Commission has already determined the issue in other cases and that therefore he need not consider our proof. His position as explained in the report is that it is immaterial whether present carriers can furnish adequate service or not. It is the protestants position that where it is shown that the protestants can furnish the service the applicant cannot receive a certificate. We take the position that the mere fact that the railroad wants the service of its own offspring is of no moment if carriers already in the field are able to furnish the service. The applicant argues to the contrary and the Examiner has completely supported the applicant's position.

In these exceptions, we are endeavoring to point out that the Commission is bound by law to accord the same treatment to a rail-owned truck line as it does to all other motor carriers. We take the position that even if a railroad shows there is need for truck service to handle its less truck load traffic, it is not entitled to have its wholly owned subsidiary projected into the field unless it can show that the carriers presently holding certificates are unable to furnish the service required. The applicant . argues that this is not true and the Examiner has held with them. We take the position that the same test must apply here as in all other cases involving applications for certificates. We refuse to agree that a railroad need only show that it wants the service and that it will not do business with carriers able to furnish the service to justify the issuance of a new certificate. It is not enough to merely show a need and a refusal to deal with present There must be a showing that the public convenience and necessity requires the proposed service by someone plus a further showing that there is no carrier presently in the field capable

of furnishing it. The Examiner has held directly to the contrary, He states that he has based that finding squarely on the Kansas City Southern and related cases. We point out herein that the factual situation is wholly different from that in those cases but also make the point that the interpretation of the statute in those other cases is wholly fallacious. The exceptions and arguments that follow are directed towards these major propositions.

ANALYSIS OF PRIOR DECISIONS AND COMPARISON WITH PRESENT CASE

The examiner has indicated that the prior decisions of the Commission has completely governed his finding in this case. Indeed he has pointed out that it would serve no useful purpose to even discuss the facts or issues in this case because that had already been done by the Commission. It therefore will be helpful if we analyze the Kansas City Southern and related cases. We will undertake this from two standpoints. The first will be to so analyze the Kansas City Southern case as to show that the factual situation relied on by the Commission in reaching its decision in that case are not at all comparable with the facts in the present In other words, we shall undertake to distinguish the facts in that earlier decision from those in our own case. The Examiner, unfortunately, has not done this but has proceeded to the conclusion that the earlier Commission decision governs all cases involving a railroad either directly or indirectly. He has indicated that it is hopeless to expect the Commission to reach any conclusion differing from that in the Kansas City Southern case regardless of what the factual situation may be. This is implicit in everything he has said in our order.

The second point we shall attempt to analyze and explore is the one we made throughout our brief. We shall contend that the decision in the Kansas City Southern case is a wholly fallacious one regardless of the factual situation and that it is contrary to law in every particular. We shall briefly analyze the reasoning of the Commission and endeavor to show that the Commission has jumped many cogs in its chain of reasoning and that it actually does not have anything of substance to support the conclusion it

reached in that case.

At the outset we want to make it clear that while we differ greatly with the Commission and the Examiner in their conclusions, we appreciate the fact that both the Examiner and the Commission are motivated with a desire to reach a proper and fair disposition of the cases. We do not want anything we may say to be construed as anything other than a legal attack on the decisions of the Commission. Nothing we say is intended other-

wise and nothing we have said is set out here except as an expression of an earnest desire to get before the Commission as emphatically as we can the many reasons why we feel grave errors have been committed in the earlier Commission decisions and now threaten to determine the issue in this present case. We feel that the Examiner has pretty well expressed a feeling of helpless inability to reach any decision other than that set out in out order. We think his order quite clearly indicates that he feels that no matter what the facts may be and no matter what his personal convictions are, he is forced to grant the certificate because of the broad language used by the Commission in the earlier decision. It is because of these things that we therefore express ourselves in these exceptions as forcefully as we know how. Our duty to our client makes it imperative that we use every means at our disposal to call these things to the Commission's attention.

In reviewing the prior cases and in applying the law to the present case, the Commission should keep one question in mind. What proof can protestants present to defeat a railroad applicant! Is it possible to present any proof that will defeat a railroad

applicant?

The only issue in any case involving an application for an extension or for new authority under the provisions of the Motor Carrier Act of 1935 is as to whether public convenience and necessity requires the proposed extension or new service. Every applicant in such a case must show two things if it is to justify the issuance of a common motor carrier certificate.

1. A genuine need by the shipping public for the service.

2. Absence of any such service or complete or partial inability on the part of existing carriers to furnish the required service.

In our case the applicant has not shown that any part of the public is even inconvenienced let alone suffering for want of any service. The applicant's own witnesses have agreed that their present rail and truck service adequately serves their needs. Since only four of their shipper witnesses were sworn and examined on the stand it is only necessary to refer to the testimony of those four witnesses. Stipulations covered the balance of the shipper witnesses they presented and the cross-examination as well as the direct was, by that stipulation, made the same as that of these four. We therefore shall refer briefly to the statements made by these four witnesses to illustrate the first point we made above. The first witness, Mr. Claude H. Caton, of LaGrange, Indiana, upon, direct examination made a statement that is typical of all the When interrogated by applicant's counsel as to whether the speeding up of rail service by the proposed method would serve the convenience and necessity of his particular business, he answered:

"A. It will help us, I think, yes, sir" (312).

Upon cross-examination he was asked a number of questions as to the rail service he is receiving from the several towns he named. He indicated that the present Pennsylvania Railroad service was satisfactory and then was asked the following question to sum up the entire situation:

"Q. In other words, then, with the service you are receiving at the present time both from the Pennsylvania Railroad as it is now operating and from the various trucking lines that are serving you I take it that your transportation needs are adequately served,

are they not?

A. As best I know", (318).

A little later on cross-examination he was asked about his knowledge of motor carrier facilities serving his point. He indicated that he supposed there were a considerable number but admitted that he had not checked to see. He was then asked:

"Q. Was that because the type of service which you are receiving and have been receiving from the railroad was good enough

to take care of your needs?
A. Yes, sir" (331-332).

The second witness, Mr. M. L. Button, of Plainwell, Michigan, took precisely the same position as the first witness. After indicating that he used truck service on all movements to Illinois, Indiana and Ohio, because that was a better service, he then went on to admit that he knew very little about how the rails handled any of his shipments and had no knowledge of their present schedules. His testimony was well summed up in the following question and answer:

"Has the rail service, when you use it to and from Fort Wayne,

been satisfactory to you?

A. Well, as far as we know it has. Yes, sir, but of course, I cannot speak for our customers. In other words, they might make complaint to the railroad company and we would not know anything about it.

Q. I mean so far as you are concerned.

A. Yes" (387).

The witness made another statement or two and then the following ensued:

"Q. But generally speaking, you are satisfied?

A. Generally speaking I would say that we are satisfied with the service, yes, sir" (387).

The general attitude of this witness was pretty well shown by his flippant answer to one of our questions. We were endeavoring to explore his knowledge of both rail and truck schedules and

operating problems. After some considerable fencing with him he admitted that he did not have such knowledge and added:

"A. Dife is too short" (389).

Their next witness, Mr. Edward F. Dinkel of Conklin, need not be discussed at any length because it developed that he was the pick-up and delivery man for the railroad at his town. He concealed this information from the first cross-examiner and did not admit it on direct. His obvious bias certainly should disqualify anything he says. He said that in one particular case involving a shipment from Milwaukee the railroad had given him slow service but admitted that the service generally was satisfactory (405).

The fourth witness (which was the last presented from the stand) was George M. McDowell of Reed City, Michigan. He frankly admitted that his present transportation facilities were adequate to meet his needs. He was asked the following question:

"Q. The transportation facilities which you have available from the Pennsylvania Railroad and all of the different truck lines that serve you are adequate to meet your needs, are they not?

A. Yes.

Q. (By Mr. Harry Yockey): What was the answer?

A. Yes" (419).

He was then questioned with respect to the motor carriers serving his community and admitted that they were giving him prompt, efficient service (420). He was then asked one of the most important questions in the whole proceeding. This question was:

"Q. Would it make any difference to you as to the identity of the truck line that gives you the service that they discussed with you?

A. As to which line it would be?

Q. Yes.

A. No" (421).

On the succeeding page this question was asked him:

"Q. Then the railroad has satisfactorily taken care of you at all times, has it?

A. Yes, sir" (422).

Since under the terms of the stipulation the cross-examination of these four witnesses with the exception of that dealing with the employee of the railroad, is to apply to all of the remaining witnesses presented by the applicant it becomes clear at the outset that there is not a shred of testimony in the record in any way supporting any claim that there is a genuine need by the shipping public for any new service whatsoever. This point will be discussed more at length later on.

The applicant disdained to even attempt a showing on the second point mentioned above. There was not a line of proof offered

to show inadequate service or facilities. Both the applicant and the railroad boasted that they had no knowledge of the present motor carrier service. Indeed they grew angry at our questions and said that they did not care about it and would not use such' service even if it was better than that the applicant proposed. Perhaps one of the queerest statements or expressions of their position in that regard was made by Mr. Christie after some considerable cross-examination of that gentleman. At one point when we sought to find out the extent of any investigation he may have made into available motor carrier service he said:

"I have not made any investigation whatever of any motor carriers along any of these seven routes and I have no desire to and

I do not intend to" (616).

To make certain that the railroad attitude was clearly set out we eventually asked Mr. Christie this question:

By Mr. CLARDY:

"Q. Witness, would you-or rather would the railroad company which you represent under any circumstances avail itself of the service of any common motor carrier operating over the routes in question or any part of them even though that service might be equal to or better than that which is proposed by the applicant in this proceeding?

A. No, sir" (627).

It should take no argument in face of such testimony to establish our point that the applicant and the railroad have not made any showing whatsoever as to the inability of existing carriers to furnish the service. In other words, the testimony presented by the applicant and its parent, the railroad, standing alone is sufficient to demolish any claim that the service already in the field is not sufficient to adequately handle the business. But we protestants were not satisfied with making a purely negative showing by this cross-examination. We went to great trouble to make a positive showing which we shall now discuss.

The protestants presented a number of witnesses from several of the motor carriers operating along the seven routes involved . in this application. We shall refer to the testimony of only one or two of them because all of the testimony of all of the witnesses is exhaustively analyzed in our brief already on file with the Commission and which we now request be made a part of these exceptions. At one place the witness, G. H. Duncan of Associated Truck Lines testified concerning a very important fact. His company parallels the proposed operation from near the Michigan-Indiana State Line almost all the way to the northern end of the state including the side runs involved. He was asked if at the present

time his company was not carrying on the precise type of operation proposed in this application.

"Q. As a matter of fact, are you carrying it on-meaning by

'you' your company-at the present time?

"A. Yes, sir.

"Q. For whom?

"A. The Pere Marquette Railroad Company.

"Q. For how long a period of time has your company been doing that?"

"A. Well, we started on May:25" (938).

This witness then testified that other carriers had entered into similar arrangements with the Pere Marquette Railroad involving other routes in the state of Michigan (938). A little later on the witness testified that if the Pennsylvania would sit down with them they would be very happy to arrange the precise kind of operation proposed by the applicant (980 to 983). In passing it should be noted that the witness testified at great length concerning the lack of business both in-bound and out-bound at the various small points the railroad contends it wants the appli-Testimony of this witness on that point is of great importance because it demonstrates that there is not enough business to justify the present truck operations over these routes let alone warrant the imposition of a new line in that field. We ask that the analysis of his testimony set out in our brief and commencing on page 61 be gone over carefully and that the transcript be checked to get the full import of what he has said. He further completely demotished all claims of any possible saving. The important thing to note is that when we had finished with this witness applicant's counsel did not cross-examine him. thing he said, therefore, stands without contradiction.

The witness Don McKay, representing the Inter-State Motor Freight System, described his operations and demonstrated that they parallel the proposed line from Fort Wayne practically the entire distance. Like witness Duncan, he also testified that commencing on May 25th this year, his company had started carrying on precisely the same type of operation as here proposed for the Pere Marquette Railroad (994). He went into much of the same matter covered by the witness Duncan and emphasized the fact that there is a surplus of motor carrier service along the line the applicant proposes to operate. After testifying about the nature of the operation they are carrying on for the Pere Marquett, he was then asked whether the proposal of the applicant differed in any way from the service his company is affording

the Pere Marquette. His answer was:

"No, sir. I haven't heard anything that appeared to be different. It sounds about the same to me" (1006).

This witness then proceeded to say that if the Pennsylvania Railroad wanted them to furnish this same kind of service that they are now rendering the Pere Marquette, his company would be

glad to do so (1007).

The witness, Harry Parker, operates a service north of Grand Rapids paralleling the lines the applicant proposed to serve in that section. This witness testified that he was in a position to furnish service and that he would do so if the railroad would request that the arrangement be made. He indicated that a number of other carriers operated in competition with him and testified that his company could and would furnish the type of service the railroad claims it desires. Several other operating witnesses, were likewise sworn and all testified in general along those same lines. A great deal more could be said about the nature of our testimony, but since it is set forth at length in our brief, we merely pray reference to it now in order to conserve time and paper.

with the railroad and the applicant having testified as we have shown above, it should be clear by now that the record does not . contain a single line of evidence that would support any contention that there is a need for the new proposed service. Neither is there a scintilla of evidence to support any claim that the present carriers cannot furnish that service. While the railroad insisted that it did not want to use anyone other than its own child in this operation all the reasons in the world cannot erase the fact that they have absolutely no knowledge about the character or even the existence of motor carrier service over the routes they seek for their child. All reasons why they do not want to use other service are of no importance until after they have placed themselves in a position to prove that present service is neither available nor adequate. The complete lack of knowledge they admitted and the stubborn unwillingness to acquire any such knowledge would make any claim about lack of suitable service entirely without foundation or merit. The admission by Mr. Christie, speaking for the railroad, that he did not have the slightest idea what effect the use of our service. would have on the railroad is a further reason why nothing they say should be given any weight. This certainly demolishes any possible contention that use of our service would be harmful to them. Some argument during the course of the proceeding led us to finally ask Mr. Christie what effect, if any, the use of our lines would have upon the railroad or its business. It took quite a struggle to get him to answer directly because he pretended to not understand the question. (See particularly pages 616-618.) We finally phrased it this way:

"Q. Would it affect your business in any way, either cause you to lose or cause you to gain?

A, (No answer.)

Q. Or do you know?

A. No, sir; I don't know" (618).

Perhaps one of the things said by Mr. Christie ought to be brought to the Commission's attention again. We had heard some discussion by him about an alleged difference between railroad freight and freight handled by motor carriers as well as contentions about an alleged saving to the railroad. This question

was then asked him on cross-examination:

"Q. You testified in that connection as to savings that might be effected by the rail-truck movement, meaning the Pennsylvania Railroad and the Willett Company, between certain points, and from certain points to certain points, and I will ask you now to state if that same saving could not be effected, or if approximately the same saving in time could not be effected by the Pennsylvania Railroad interlining and transferring its freight at the break point shown there, to other authorized common motor carriers operating over the same route as you are proposing to operate over here?

A. I don't know. The question is such that I don't want to answer it, or try to answer it, any other way than what I have. I don't know what we could do, because I haven't investigated into

it" (557-559).

But that is not all this witness had to say on that subject. Having partially evaded answering the question by saying he didn't know about the service or hadn't made any investigation, one of protestants' counsel pursued the matter further. He phrased the question to include the condition that the protestants be in a position to furnish precisely the same sort of service here proposed as a foundation for asking him whether or not the railroad could not obtain precisely the same savings he had described in his earlier testimony.

"A. I say, assuming further that they will-perform the service in the same manner that the Willett Company will, then it could

be, yes.

Q. The same saving in time would be effected?

A. It could be, yes" (561).

But that is not all.. Mr. Anderson finally asked this question:

By Mr. ANDERSON:

"Q. Mr. Christie, have you made any study at all with respect to what might be done, or what saving in time might be effected by interlining, as I said, or transferring freight under participating tariffs, with other authorized certificated common carriers? A. None whatever; no, sir.

Q. All right.

A. We are not interested in that" (562).

With this factual background now before the Commission we turn to a short analysis of the factual situation in the Kansas City Southern case. When considering our discussion of the things the Commission found as the basis for its decision in that case we suggest that the foregoing analysis be again read.

KANSAS CITY SOUTHERN CASE

The facts in this case are so greatly different it is difficult to understand how anyone could even assume there is a similarity. In the first place the matter was before the Commission on either two or three applications. This included a grandfather application covering part of the route or routes sought and while the report is not quite clear it appears that either one or two new applications were before the Commission. While the report does not so state it implies that probably some of the operations were being carried on at the time of the hearing and when the order was written. At any rate the always appealing fact that there is a grandfather application in the background was present in that case and not in our own. Another substantial point of factual difference is that the proposal in that case calls for a complete substitution of truck service for the local or way freight service in at least three of the divisions. The Commission recites at one point:

"Applicants proposed method of operation contemplates complete substitution of motor vehicle service for rail local or wayfreight service in the three divisions between Joplin and Texarkana and in the Beaumont Port Arthur Division. All local traffic between points in these Divisions would move entirely by motor

vehicle" (10 MC 229.)

The ensuing discussion makes it clear that service on ltl freight to the intermediate points was to be handled entirely by motor vehicle. In our case, the local or way freight trains are to continue operation and if the shipping public desires, even the way cars themselves, will continue in service. In other words, in our case there will be a complete duplication of service and effort not present in the Kansas City Southern case.

In that case the railroad presented what appears to be a detailed statement of the inbound and outbound tonnage at each of the points to be served. Exhibit 5 in our case is singularly misleading and does not show the fact with respect to the individual points to and from which they claim they want to serve. The brief we filed should be read to discover what valiant effort we made to compel the railroad to disclose the very figures willingly

presented in the Kansas City case. We even tried to have the Commission issue a subpoena duces tecum during the interval between the two hearings but without success. There is in our case, no showing whatsoever therefore that there is actually any substantial tonnage to move to or from the various intermediate points. As the transcript shows and as our brief points out we presented testimony that was not even attacked going to show that the tonnage moving to and from these points is so small as to not warrant continuation of all of the present motor carrier service let alone the addition of a competing carrier.

In the Kansas City Southern case the applicant proposed placing a great number of schedules in operation. In our case, however, they propose to run one schedule each way daily to duplicate with the rail service presently available. At one point the service now is every other day by rail and while it would appear that it may be daily by truck the record will disclose that there is no assurance that this will be true. We forced them to admit that the schedule proposed in their Exhibit 4 was only tentative and might be changed completely. There is, therefore, this additional difference between these two cases.

A vitally important difference will be found in the nature of the shipping witnesses testimony in that case as compared to our own. As our analysis above has disclosed how a single witness presented by the applicant testified that the present rail service was inadequate. On the contrary they admitted that the present service was meeting their needs. In the Kansas City Southern case the Commission makes the statement that a number of the witnesses had "pointed out the inadequacy of the present rail service" (page 230). Apparently some of the service was presently being offered to the public because the Commission makes the following finding:

"Shippers at Shreveport described a greatly improved service from there to Lake Charles and intermediate points and urged the need for similar improvements in the service northbound. A representative of shippers at Texarkana pointed out the deficiency in the present rail service to and from that point" (page 230).

It should be apparent immediately that in the Kansas City Southern Case the shippers have given detailed testimony as to inadequacy of present rail service. In our case there is not a line of testimony to that effect by any witness for either side. Here, therefore, is a difference that surely should distinguish the two cases without further study. In the Kansas City Southern case, the Commission apparently had before it testimony of competent shippers going to show that the rail/service was inadequate and detailing the nature of the faults they found with it. In our case, on the contrary, the shipper admitted on cross-examination that the present rail service they are receiving is meeting their needs and

that truck service was adequate also. Surely it will take no argument to establish our point that the two cases are wholly dissimilar on the first important point we discussed above—that is that there must first be established a genuine need for such service, by the

shipping public.

The Commission also recites the fact that at some points along the various lines the existing motor carriers would have to serve the points as off-route points. That is not true in our case. In every instance, present motor carriers opposing this application operate over the precise highways involved in the applicant's request for authority. The Commission also finds that some of the points are entirely without motor carrier service. Neither of these things are true in our case. The essential differences therefore between the two are so great as to make them wholly dissimilar.

At another point, the Commission in the Kansas City Southern case, concludes that the carriers would find it difficult to adjust their schedules to meet the needs of coordination with the rail service without disturbing their service to other points (page 236). In our case the record is entirely uncontradicated that no such situation could or would exist. We established that our service would definitely be available to the railroad involved in this case precisely as it is presently being made available to the Pere Marquette Railroad. The applicant did not trouble to cross-examine our witnesses with respect to these things. The railroad witness admitted we could give them the same savings in time and money (561). That witness however said the railroad was not interested in what we protestants could do for them. The Commission must therefore agree that in our case there is an uncontradicted showing that the motor carriers protesting could perform the service required and coordinate with the rail service whatever that phrase may mean. As we have pointed out several of these protestants are furnishing this so-called rail-truck coordinated service to the Pere Marquette Railroad in the State of Michigan. These carriers testified without contradiction that the service they are performing for that railroad is precisely the same as that described by the railroad and the applicant in this case. It therefore follows that the imaginary obstacles discussed by the Commission in the Kansas. City Southern case are not present in our case. It is certain that the record in our case supports a conclusion directly contrary to that set out in the Kansas City Southern case. When the Commission takes into account the fact that in our case we have demonstrated that independent motor carriers can and actually are coordinating with rails exactly as here proposed it certainly cannot conclude that the obstacles to such a plan as described in the Kansas City Southern case are present in our case.

In this connection on page 236 in the Kansas City Southern case, the Commission has found:

"Upon the evidence therefore we are persuaded that coordinated service through the voluntary cooperation of all or some of the

protesting motor carriers is not here practicable."

In our case there is no evidence to justify such a conclusion. On the contrary, the evidence we presented makes it certain that the belief the Commission entertains in that case would not be justified in our case. Certainly absence of knowledge and interest by the railroad cannot be used as the basis for such a finding. Frankly, we believe that the fears conjured up by the Kansas City Southern and adopted by the Commission in that case were just as groundless there as they are in our case. But regardless of whether that is true or not it is certainly clear that here we have an instance in which the truth of the old adage that "the proof of

the pudding is in the eating" is amply demonstrated.

At another point in its order the Commission pointed out that the testimony related almost entirely to movement of shipments where both rail and motor vehicle service was involved (239). In our case the applicants did not present any shipper testimony about any need for such a coordinated service. The shippers did not make any mention of such coordinated service and indicated without exception a complete lack of knowledge about how any of their shipments had been handled in the past or would be handled in the future if the application was granted. The railroad, however, testified that about one-half of one percent of the total tornage moving would not be of a character having either a prior or subsequent rail movement. With that statement in the record the Examiner has proceeded to grant the applicant a right to transport freight of all sorts without any relation to any prior or subsequent rail movement. If one-half of one percent of the tonnage is to govern the kind of order granted and restriction imposed then what about the remaining ninety-nine and one-half percent?

The foregoing set out many of the differences in the factual situation between the two cases. It should not require further argument to establish our contention made in our original brief and throughout these exceptions that from a factual standpoint the Examiner was not justified in simply deciding that the doctrine in the Kansas City Southern case automatically disposed of this and all other rail sponsored applications. In substance, however, the Examiner's report is bottomed on nothing more nor less than such a belief. We want now to briefly point out another reason why we think the Kansas City Southern doctrine should not be applied to as or to any other similar situation. In the first place.

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the opinion of the Commission apparently proceeds on the mistaken theory that a motor carrier not owned by a railroad is utterly incapable of furnishing motor carrier service of the type described. We wonder if the Commission understands what such a position really means? As the Examiner views it, the Kansas City Southern case has said in substance that no independent motor carrier can render service where a railroad is in the picture in any way. The applicant in our case has argued that that is what the case means and the Examiner has agreed. When the Commission (236) made the observation that

"In view of the close adjustment of schedules and interchange arrangements which good and dependable service would require as well as the contemplated joint use of stations and employees, we believe that the railway has sound ground for this contention." it is unconsciously, we believe, indicating a belief that under no circumstance could a motor carrier not owned by a railroad ever satisfactorily perform service for a railroad. It does not say this but the Examiner may be pardoned for believing this to be the meaning. Of course in our case we have demonstrated through our arrangements with the Pere Marquette that this is not a sound conclusion from a factual standpoint. The total absence of proof to support such a statement here precludes its application to our case. We believe that from a legal standpoint it is even less sound.

Let us explain what we mean.

A railway is not the shipping public. Public convenience and . necessity mentioned in the statutes has to do with the shipping public and not with the carrier. This statement by the Commission indicates a belief that where the carrier refuses to do the things that it indicates it will do with its own child, that alone justifies their conclusion that an independent motor carrier simply cannot perform satisfactorily. In other words the Commission has interpreted the statutes to mean that one can hoist one's self by his own boot straif if he is adroit enough in how he goes about It is for that reason that we have maintained throughout these proceedings that the Commission has entirely misconstrued the statutes and is making a discriminatory application of it. The Commission in the Kansas City Southern case does not refer to any testimony pointing out that it would be impossible to adjust schedules and to do the other things required. It merely refers to the fact that the railroad has made that contention and then upon no firmer ground than that proceeds to say that they are persuaded that independent motor carriers could not perform the service. This amounts therefore to saying that where the railroad as a carrier indicates that it simply will not work with an independent motor carrier that is sufficient to persuade the Commission that the independent carrier simply cannot do the job as-

well as the rail owned subsidiary. This amounts to saving that the railroad is entitled to a certificate simply by arguing with the Commission about something upon which it is unable to present any proof. We have not read the transcript in that case but we believe we are justified in saying that the Commission did not have before it at any time any facts upon which the conclusion could be predicated. Certainly in our case, there is definitely no proof whatsoever going to show that the independent carriers cannot do the job just as well as the rail owned subsidiary. the contrary the evidence discloses that we are actually perform-The applicant makes much of the fact that it is ing the service. performing such service now and that this proves it can do so on this new line. On that basis we insist we have proved we can do so also. From a legal standpoint, however, it is just as unsound whether there is evidence present or not. It is unsound because it amounts to a finding that a carrier of a certain type is automatically entitled to an extension even though there is nothing else to justify it except a frank refusal to do business with those in the field. We ask now that the Commission re-read our discussion of the facts in our case. We especially request that reference we made to the testimony of the witness Christie on pages 557 to 562 of the transcript be studied. In this case the railroad witness admits we might be able to furnish the service but at the same time also admits he has never investigated the subject and does not intend doing so.

Since this is quite obviously the very keystone in the Commission's decision in the Kansas City Southern case and since it is expressly negatived in our case, it is inconceivable that the Commission will reach such a conclusion here. In the absence of evidence the Commission cannot make of finding that certain thing is true. Where the applicant has no knowledge on the subject and protestants produce uncontradicted proof that we can furnish the service it is the very worst kind of legal as well as equitable error to make such a finding. This is therefore one of our chief complaints. It demonstrates the error of trying to decide our case by simply referring to another case without making any effort to analyze our evidence and comparing it with that which the Commission found in that other case. Due process has certainly not been followed in disposing of our case as this demonstrates.

demonstrates.

ANALYSIS AND DISCUSSION OF LEGAL PHASES, OF CASES

We have said repeatedly above that the decisions of the Commission in the Kansas City Southern and succeeding cases were contrary to the statute. Immediately above we have pointed out

the differences in the factual situations in those cases as compared to that in the present one. We turn now to another phase. It is our contention that the Commission has not been justified in its determinations in the other cases and that starting with the Kansas City Southern case its application of legal principle has steadily gone from bad to worse. The Kansas City Southern case marked a clear departure from all previous construction of the statutes. The succeeding cases have gone even farther. Apparently without completely realizing it the Commission has now, reached a point in its interpretation of the statute that no advocate of motor carrier regulations even dreamed would be approached. The Examiner in our case has construed the prior decision of the Commission to mean that a rail owned motor carrier is entitled to a certificate despite uncontradicfed proof that independent . motor carriers can furnish adequate service. It is his position that no motor carrier opposition can ever defeat a railroad application. We shall now anderstake to demonstrate the correctness of this analysis of his position.

Most of the discussion in the Kansas City Southern case had to do with the contentions made by the railroad. A great deal of it was background matter dealing with the railroad operations and the grandfather phases of the matter. We have endeavored to analyze the report of the Commission and to pick out from it those things which the Commission has found as claimed facts upon which it has concluded that the service of the rail owned subsidiary was required. We will spend no time in analyzing the testimony alleged to support the contentions that there was a genuine need for some sort of truck service to supplement the

rail service.

We turn first to the Commission's recitals of the contentions made by the railroad. These contentions the Commission sets out are the arguments advanced by the railroad in support of its position that it must have its own subsidiary handle the traffic rather than make use of the facilities of carriers already in the field. These contentions are:

Some of the towns to be served would be off-route points.

2. The railroad contends that the proposed service will not be competitive.

3. They argue that their own operation would attain greater reliability.

4. That this is a new type of service not offered by any motor carrier now in the field.

5. No single truck operator serves all of the points.

6. The operation of some of the motor carrier protestants is based on service to points not on the railway and therefore such protestants could not offer a complete or successful rail-truck coordination service.

7. The railway is unwilling to turn traffic over to its com-

petitors

8. The applicant says that even if the Kansas City Southern was willing to set up joint rates other railroads would not do so and thus cooperation or coordination could not be achieved.

We turn now to an analysis of the conclusions of the Commission based upon its interpretation of the argument made by the rail-

road. These conclusions are:

1. That the so-called coordinated service is a new service.

2. That Congress contemplated coordination.

3. That the railway suggests that it could withdraw from less truck load service much easier in another manner.

4. That the railroad is convinced that no bona fide coordination or cooperation could be attained with any independent motor carrier.

5. That the Commission cannot compel the establishment of

joint rates or through service.

6. That the protestants have not suggested any plan for coordination.

7. That the railway would have to make arrangements with

several motor carriers.

8. That the carriers serve other points and would have difficulty therefore in adjusting their schedules so as to be able to furnish the proposed service.

9. That the Commission is convinced that the railway is correct in its argument that it must own the carrier furnishing the

service.

After reciting the above the Commission then says that:

"Upon the evidence, therefore, we are persuaded that coordinated service through the voluntary cooperation of all or some of the protesting motor carriers is not here practicable and that the useful public service which the proposed new operation would serve cannot be served as well by existing lines or carriers" (236).

Which one of these statements has any direct bearing on whether or not the carriers now in the field can furnish the service? Which one of these is a statement of a fact as distinguished from conclusion or argument? Yet the several statements set above represent in the entirety the alleged facts found by the Commission as justification for its proposed grant of authority. They do not, in our opinion, justify or warrant anything. Let us discuss these so-called facts one at a time so that we may show the Commission just how far astray they have gone in attempting to justify the issuance of a new certificate.

The first alleged statement of fact is that this is a new service. This we deny. It is an ordinary motor carrier service precisely the same as that being rendered by motor carriers generally. The only thing claimed as a distinguishing factor is that it is being furnished to a railroad. We have not read the record in the Kansas City Southern case, but in our case we certainly clinched the fact that there is not a single different factor that could justify anything. It is not even new because one section of the routes sought are served by a motor carrier now. We even forced the railway witness to agree with us as our brief set out. But even if it is a new service it is obvious that this fact does not justify or warrant the issuance of a certificate if any carrier already in the field can furnish the service. This recital that it is a new service therefore has no meaning standing alone. We shall discuss it again in a moment.

The next statement that Congress contemplated the very thing granted by this certificate is, of course, not warranted by anything. When Congress speaks of coordination or cooperation between the various types of carriers, it certainly was not attempting to say that that furnished the ground for the grant of a new certificate to a railroad or anyone else. Indeed, the very purpose of this part of the act is the exact opposite. All that Congress was attempting to say in the policy section was that the Commission should prescribe rules and should do things necessary to encourage and promote cooperation between railroad and motor carriers. grant of a new certificate can only defeat that purpose. The Commission has apparently misconstrued this section to mean that where a railroad will not cooperate that furnishes some basis for the grant of a new certificate for the railroad. If that is not what the Commission means when it makes the statement it does in the Kansas City Southern case, then the language it has used is confusing and without meaning. It is applying the language as though it read that new certificates should issue if one of two carriers would not cooperate. And issue it to the one refusing to do so if that carrier is a railroad and the agreeable one is a motor carrier.

When the Commission cites with approval the statement by the railroad that it could withdraw from less truckload service in some other fashion it is apparently signifying a willingness to let the railroad threaten it into granting a certificate. What if a carrier does feel that it can get out of a certain business in some other fashion? What has that to do with whether or not it should be granted the right to inaugurate a new truck service? Why the Commission cites this as one of its conclusions we do not know. At any rate, it certainly does not justify the issuance of a new certificate.

The worst part of its recital and conclusion is its statement that ... the railroad is convinced that there could be no bona fide co-operation between itself and independent motor carriers. There certainly cannot be when they refuse to do so. What on earth has that to do with whether or not the railroad should be allowed to invade a new field of operation? It amounts to saying that the Commission is approving the legal argument of the railroad although there are no facts upon which the conclusion can be founded. We have not read the transcript but we venture the assertion that there is not a single line of testimony anywhere in the record of that case that would justify the Commission's finding that as a matter of fact the truck companies would not make bona fide effort to cooperate with the railroad. Indeed, the Commission in another part of its decision in that case has specifically found that the truck companies have indicated a complete will-There is therefore absolutely no justificaingness to cooperate. tion for the Commission's adoption of the railroad's contention. Of course, the Commission cannot make such a finding as a matter of fact unless there is something in the record to support its conclusion. If, as its finding indicates, there is no testimony in the record, then obviously the Commission's recital of this statement of apprehension by the railroad is not only unjustified but constitutes a grave infraction of the constitutional rights of the protesting carriers. Certainly in our case this contention cannot be applied. We have made every possible bona fide effort to cooperate and have demonstrated that we are successfully doing so with another railroad. This reason, therefore, should not have been advanced in the prior case and cannot be applied in our case.

The statement of the Commission that it cannot compel the establishment of joint rates or through service is wholly beside the It is unfortunate that the Commission should see fit to make such a statement and then to use it as the basis for the grant of a new certificate. This indicates an apparent confession that it will make no effort to carry out the policy set out in the statute relative to cooperation. In the first place the Commission has earlier said that the statute prescribes the necessity for co-ordination and cooperation with the various modes of transporta-The Commission has used that very fact as one of the grounds on which it has persuaded itself that there should be the grant of the new certificate. It has mistakenly called the grant of a certificate such cooperation. Observe how these two statements contradict one another. More important, however, from our standpoint is the fact that the Commission has chosen to recite this legal inability to compel the railroad to do something as a reason why the railroad should be granted the authority it seeks. This is a clear case of the railroad successfully lifting

itself with it own boot straps. The Commission is saying, in effect, that if the railroad will not do what the statutes say should be done, then that and that alone is sufficient to warrant a grant of the right it seeks. The fact that the motor carriers are willing to do what the railroad refuses to do is not considered any reason why the protestants should defeat the applicant, apparently. This is a one-way street, it seems.

The next reason the Commission recites is that the railroads would have to make arrangements with more than one protesting motor carrier. What of it? The only question before the Commission is whether es not the service is available-not whether it is available by one or a dozen carriers. Seven separate operations are required in our case—ten in that one. If this reason is supported by anything of a factual nature in the record, then all that it indicates is that the service is there but that the railroad simply wants to deal with only itself. If this reason means anything, then a motor carrier should be entitled to an extension of its operation by having someone testify that while it has plenty of service available it wants to deal with only one carrier. Such nonsense has never prevailed and never will where an ordinary motor carrier is involved. This alleged statement of fact therefore is no ground for the grant of anything. Can a certificate covering all the highways in the country be obtained merely by showing that no single carrier can serve all the routes?

The next statement by the Commission to the effect that the carriers might have difficulties adjusting their schedules is undoubtedly not supported by anything in the record. At least the Commission cites no facts to support that conclusion. None could be cited in our case because the testimony shows to the contrary. (See our earlier discussion.) But it is our contention that this is a legal error on the part of the Commission because it is a finding not supported by fact and one which furnishes no justification for the grant of anything in the way of a new certificate under any circumstance. Until it is demonstrated by competent evidence that the existing carriers cannot furnish the service the Commission is not justified in making any finding of this sort. In our case there definitely is nothing to support it. On the contrary, as we have shown earlier, it is undisputed that we could do so and that the railroad has no knowledge on the subject.

On the basis of the above arguments or alleged facts the Commission then concludes that it believes the railroad is correct in its argument that it must own the truck line. Of course this last is a mere conclusion and is not intended to be a statement of fact. Since, however, it is supported by only those things we have just dicussed plus one other argument it ought to be apparent that there is nothing substantial to support it. Perhaps, however, the Com-

mission is giving great weight to the contention that the protestants have not suggested a plan of co-operation or co-ordination. Here again, of course; this does not apply to our case but we want to make the point that it was legal error to have even mentioned it in the earlier decisions. We say this because it apparently means that the Commission has shifted the burden of proof from the applicant to the protestants. Since when has it been necessary for protestants to show that the railroad and the motor carriers would be able to operate under a certain sort of plan when the railroad is refusing to even entertain a proposition? Since when has the burden shifted to the protestants in any case to show something in the way of affirmative proof when the applicant has not made out a case?

As we understand the law, in all cases of this sort, the applicant is under the burden of showing that there is a public need for the service and that the carriers in the field are unable to furnish it. It is never necessary for the protestants to come forward with proof showing that their service is available and satisfactory until the other side has definitely established the contrary. There is not a line of evidence suggested by the Commission's decision in the Kansas City Southern case to the effect that the motor carriers were in resposition to furnish the service. True, the Commission recites that the motor carriers serve other points and that several carriers would be required to furnish the service, but that is merely argument and is not a solid fact indicating that the carriers would not or could not furnish the service. We challenge the applicant in this case to point out a single solitary bit of evidence in the Kansas City Southern case that would support any of the conclusions that the protestants there could not have furnished the service. We submit that the only thing to support such a conclusion is the fact that the railroad simply will not do business with any of the protestants. This, we think, is the essence of the whole case and that for that reason it is fatally defective. We have gone over the report so many times we almost know it by heart. We are certain. therefore, that there is no recital of any factual basis for the decision except those things we have analyzed above. Not a single one of those things the Commission recites as justifying the order can be said to be a fact proving that the carriers already in the field could not furnish the service.

If the Commission's conclusions are studied and then compared with the recital of the railway contentions, it will be seen that all the Commission has done has been to recite with approval the arguments of the railroad. This is far different from a citation of factual matter upon which to base an order. A mere recital that the Commission believes that the carriers would have

difficulty arranging their schedules and that the Commission cannot compel the railway to get along with the truck companies are pretty thin statements to be used as support for the grant of the vast authority set out in the Kansas City Southern case. It, however, so far as we can see, constitutes all the Commission has been able to find in the record.

As an indication of how the Commission has indulged in faulty reasoning throughout we turn now to its statements on page 238 of the report in the Kansas City Southern case where it said:

"We do not believe that the development of this new form of service will seriously endanger the operations of protestants but in any event the public ought not to be deprived of the benefit of an improved service merely because it may divert some traffic

from other carriers."

When the Commission said this it apparently had overlooked the fact that earlier in its discussion it had recited with approval the fact that the railroad had been apprehensive about losing business to the truck companies. The Commission has apparently decided that the rails apprehensions about losing business to motor carrier's furnish one solid ground for the grant of new authority to the railroad yet in the very next breath says that the public ought not to be deprived of this service merely because of the same apprehensions of motor carriers. Inconsistency certainly runs throughout the order but this is the worst example of it. If rail apprehensions about what motor carriers would do to take away their business justifies the grant of authority, then surely motor carrier apprehension as to what the rail would be able to do in taking business from motor carriers ought at least to cancel out the first statement of belief or apprehension. It has not worked that way, however, in this case. Since no proof was presented on that issue in our case and since the railroad admitted it had no knowledge on this subject it surely cannot be found as a fact (618). Even more serious, however, is the fact that the Commission apparently recites this in the belief that that has something to do with whether or not the present service in the field can handle this business. It surely takes no argument, if one will but reflect for a moment, to establish our point that this recital has absolutely nothing to do with the real issue of convenience and necessity.

Right after the above statement was made the Commission said: "If that principle had been followed indeed no motor carrier

service could have been developed" (238).

This, of course, is the most fallacious argument possible. In the first place, motor carriers developed their service against the opposition of the railroads. Motor carriers pioneered a service that the public has increasingly found adequate and efficient. The rails now seek to step in and oust these pioneers. The very proof of that fact lies in the contentions made by the railroad in this case. They frankly admit that it is a better and more efficient service. It did not develop with the help or aid of the railroad. Yet this statement by the Commission seems to imply that the motor carrier service in the field today would not have been offered to the public or come into being had it not been for the railroad. It seeks to imply that the ground just discussed above is justified because if they take any other position the motor carrier service would not have expanded to its present proportions. This, of course, is certainly contrary to all known facts and we confess we do not understand why this sort of thing was advanced as a sup-

port for the grant of authority.

If the Commission is trying to say that it is rejecting the protestants' arguments that they will lose business if the rail subsidiary is granted a certificate then again we must say it is ing a position that has no substance. This certificate is a motor carrier certificate of precisely the type granted to all applicants. The statute makes provision for no other kind. The physical manner of operation does not differ from that of ordinary truck operation as we demonstrated. But when the Commission says that the possible loss of business by protestants is no reason for denial of the grant it is putting the cart before the horse. The real question is a far different thing. Is the new carrier needed to adequately serve the public? That is all the Commission can consider. We can agree that if, upon the facts of record, the Commission finds that a new carrier should be permitted to have a certificate, it is, in some cases, of no moment whether other carriers lose business or not. But whether they will or not is no affirmative fact justifying the grant. It is merely a consequence that will flow from the grant. The citation of this argument seems. to imply that the Commission believes it a strong argument. It is cited in even stronger language in later decisions. We must therefore, point out its total inapplicability. In passing we should note that if the grant of a new certificate threatens to so weaken existing carriers as to endanger their ability to furnish adequate service, the Commission should not grant the authority.

Let us look at it another way. When considered with other things, the Commission has said in the order in that case, this language implies that the very fact that the railroad may take business from present motor carriers is actually an affirmative fact that justifies the grant and at the same time it is also agreeing with the railroad that because a motor carrier may take some railroad business if the grant is denied, that fact also justifies the

granting of a certificate. This is certainly playing both ends against the middle. We protestants may take business from the railroad, so it is claimed. That, in their opinion, warrants the grant of a certificate to the railroad to enable it to protect itself against the puny attacks of the motor carrier. But when the motor carrier points out that the railroad probably will take business from it—the motor carrier—if the certificate is granted, that also is advanced as a reason why the railroad should be granted the certificate. The Commission has adopted both arguments. Logic cannot justify such strange reasoning.

Now let us quickly trace the later development of the doctrine established in the Kansas City Southern case. We think we can demonstrate that bad as it was in the first case it has now deteriorated to a point where the Commission has clearly violated the statutes in every subsequent decision and that the Examiner has done so in our case. Even if we were to concede that the things we have analyzed above do furnish a factual background upon which the Commission's conclusion could have been based in the Kansas City Southern case we now propose to show that that doctrine has been changed and misapplied in a way that clearly violates

both the statutes and the constitution.

Note carefully that in the Kansas City Southern case the Commission sums up its determination to grant the authority by saying that:

"Upon the evidence therefore we are persuaded that coordi-

nated service . * * * "

Note well the first three words "Upon the evidence." That indicates that the Commission at least believes that it had some evidence in the record to supoprt its conclusion that the protesting motor carriers could not furnish the service the railroad claimed it desired. While we have argued vigorously that the record as set out in the report does not warrant such a conclusion we now want to trace the development of this doctrine and show what has happened to it in subsequent cases.

In the Missouri Pacific case cited in Volume 22, Motor Carrier Cases, we find the Commission reciting that the protestants had presented proof going to show that they were in a position to furnish the service. The Commission on pages 330-331 briefly analyzes the evidence presented by the protestants going to show that they could furnish the service. Note well the disposition

made of those contentions. The Commission says:

"Substantially similar contentions were advanced by certain protestants in Kansas City Southern case, supra, and our views with respect thereto are amply set forth therein" (331).

In the Kansas City Southern ease the Commission was carefulto say that after inspecting the evidence it was brought to the conclusion that the so-called voluntary co-operation was not practicable, whatever that means, and that other carriers could not furnish the service despite the contentions of the protestants. In the Missouri Pacific case, however, the Commission definitely recites facts going to show that the motor carriers could and would be in a position to furnish the service. They dismissed that showing however, by the short sentence we have cited just above. amounts to a further advance along the line that we have been attacking since this present case was started. In the Kansas City Southern case the Commission apparently recognized that independent motor carrier service under some circumstances might conceivably meet the alleged need. For that reason it therefore predicated its finding "upon the evidence." In the Missouri Pacific case, however, the Commission contents itself by merely saying that contentions along this general line were made in the earlier case and that it is unnecessary to pay any attention to them. It utterly misconceived the basis of that decision. We turn now to yet another case.

In the case entitled Atlantic Coast Line Railroad Company Extension of Operations—Virginia—North Carolina, reported in Volume 30, Motor Carrier Cases, commencing at page 490, we find just about the last step that needs to be taken to completely wipe out any possibility of successful motor carrier opposition. After reciting something of the nature of the application and after saying that this is a new field of service, the Commission then.

says:

"Protestant asserts that Thurstone Motor Lines served all of the points involved, and it may be as contended, that existing motor carrier service is adequate, but one competitive carrier or class of carriers has no vested right in the continuation by an other of an inefficient method of operation" (492):

On the next page the Commission then says:

"On the whole the facts and arguments presented are no different from those passed upon by the Commission in several instances granting similar authority to other carriers. See Kansas City Southern Transport Company, Inc., Com. Car. Application & MCC 5" (493).

See now how far the Commission has gone. In the first case it at least tried to say that the evidence in that particular case convinced it that the railroad's own subsidiary alone could furnish the service. In the Atlantic case the Commission has now said that even if the motor carriers could furnish adequate service the railroad should be granted the right nevertheless. It is one thing

to say that proof of inability of existing lines to furnish service warrants a new certificate but a totally different thing to say that all such applications should be granted regardless of the evidence. When the Commission concludes that "It may be, as contended, that existing motor carrier service is adequate" it was, in our judgment, completely destroying any possibility of lawfully granting any authority to the applicant in that case. It is utterly incongruous to say that existing motor carrier service is adequate and yet conclude that a new certificate should be granted to another carrier.

Especially dangerous is the statement that no carrier has a vested right in the continuation by another of an inefficient method of operation. Since when does an applicant acquire the right to inaugurate a new service on the sole ground that it, the applicant, is rendering poor service at the time. A moment's reflection will show that this statement by the Commission amounts to saying that the surest way to get new authority is to give poor service. Of course the whole subject should not have been considered and furnishes no basis for any conclusion other than that there must be a denial. The point we want to make however is that from the statement made in the Kansas City Southern case the Commission has slowly but steadily progressed to a point where it has said that even if motor carriers are able to furnish adequate, efficient service a railroad owned subsidiary is nevertheless entitled to a new certificate. By what strange logic can this be justified? It lemonstrates what we have been contending all along that if these decisions stand as written and interpreted it means that no motor carrier in the United States can ever successfully oppose any railroad owned motor carrier on any application any time. In justification for that broad statement let us now look to the language used by the Examiner in our case.

On Sheet 4 the Examiner devotes a single paragraph to the proof we presented. As our subsequent analysis shows he omitted a discussion of much of the vital testimony and completely erred in interpreting much of the rest. Nevertheless he clearly finds that the protesting motor carriers are in a position to and could furnish the service. After that recital, however, he then says:

"Similar contentions on the part of protestants have been advanced in other like cases before the Commission. Especially in the Kansas City Southern case, supra, and what the Commission stated in that decision should apply equally well here."

What contentions?—That we can furnish the service? That there is no need for a new carrier? Obviously that is all he has in mind because all he has said in summing up our evidence is to that effect. When he says "what the Commission stated in that decision should apply equally here," what does he mean?

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It means that the Examiner, after finding evidence that shows that the protestants could and would furnish the service, has simply made up his mind that the Kansas City Southern case has established that no motor carrier protestant can ever defeat a rail application. He means that where the motor carrier efforts to furnish the service to a railroad have been summarily rejected by the railroad, as in our case, that fact of rejection is sufficient to justify the railroad's request for a certificate. The Commission has therefore traveled a long way toward establishing a doctrine that threatens the destruction of the motor carrier industry. Indeed it is well on its way to do so. If this doctrine stands it amounts to saying that the railroads are invited to file applications because they may be sure that the decision will be favorable regardless of any motor carrier opposition. This, we think, a probably not as apparent to the Commission as it should be We, therefore, have gone to considerable trouble in this case because we think the time for a showdown has arrived.

Remember that the record here is uncontradicted that protestants are not only capable of furnishing the service but are actually doing so for another railroad. Remember also that the applicant did not present a single word of evidence to show any inability on the part of the protestants to furnish the service. The Examiner's statements, therefore, about prior cases can only mean that he has singled out as controlling, the Commission's language in the Kansas City Southern case where it has said in effect that it was persuaded that the railroad argument was sound when it said it did not believe it could obtain the service from any independent motor carrier. He has construed that to mean that in any case an independent motor carrier can never furnish the service whether they prove to the contrary or not. If this is not the meaning, then just what does he have in mind? We challenge the applicant to make anything else out of the decision. Since it has argued all along that the railroad need only show convenience to itself, it can hardly change its position now. But the hard inescapable facts make it impossible to refute what we have now pointed out. It is not only contrary to law, it is a bad policy. It reeks of discrimination.

One indication that Division 5 at least is now agreeing with us is found in its recent decision discussed more at length in our brief. In that case, the division after finding that there were protestants in a position to furnish the service, said this:

"Conceding this public need, the controlling question is whether or not there is already available a motor carrier, able and willing satisfactorily to supply such service for the railroad. If so, there is no need for applicant's added service in this respect."

We cited this case in our brief and pointed out the fact that the record in our case justified a similar conclusion. The Examiner apparently did not pay any attention to that decision of the Division and makes no mention of it. Instead he relies entirely on the Kansas City Southern case and its subsequent misapplication and misinterpretation. We do not believe that the Commission intended to say in the Kansas City Southern case that a railroad would be granted a certificate regardless of the evidence. The subsequent decisions however have broadened the doctrine to mean just that. This latest Division 5 decision brings the matter back into a more proper light. Nevertheless, until the Kansas City Southern doctrine is completely reviewed and discussed again it is unquestionably true that Examiners will continue to interpret it exactly as has been done in our case. It is for that reason, therefore, that we have urged these things so strenuously. It is for that reason that we also urge the necessity for an oral argument so that the points we make may be gone into with more thoroughness and so that the Commission and the Division may have an opportunity to get at first hand a better understanding of our position.

There are a great many other things that we could discuss with some profit in connection with the things set out in the Kansas City Southern case. We hope that what we have said will cause the Commission to again carefully scrutinize what it there said. Just one other point. We should mention that when the Commission says that it does not believe the grant of authority will endanger other carriers, it is unquestionably indulging in wishful thinking on a subject quite obviously not supported by anything in the record. If there are any facts the Commission is under the necessity of setting them forth before it states that unjustified conclusion. We can establish the contrary in our case but that, of course, is not necessary and we have not undertaken to argue that point at length here. We do not mean it is

not important.

Reviewing some of our contentions that the Commission has made a series of legal errors we make several points. The Commission has not recited a single bit of evidence in the Kansas City Southern case that constitutes justification for any of the conclusions it reaches. It is therefore, in our judgment, defective and a violation of the statutes. More important is the fact that subsequent decisions have construed the Kansas City Southern case to mean that no motor carrier can successfully oppose a railway application even if the motor carrier service is completely adequate and satisfactory. This last interpretation of the Kansas City Southern case has been brutally applied in our case. It is for

that reason that, we say that the Examiner's finding is in violation of the statutes and that our rights have been invaded without any justification whatever.

DISCUSSION OF OTHER PHASES OF CASE

Our brief, as we have said many times, sets forth a multitude of additional facts and reasons we have not had time or space to cover in these exceptions. We again pray that that document be incorporated in and made a part of these exceptions because the things there set out apply with equal force to the exceptions set out herein. We want to merely mention one or two of the additional facts and arguments discussed in the brief to illustrate what we mean.

The records show without dispute that the railroad proposes a duplicate service. It has in mind an operation of its trains over these several disjointed routes in exact duplication of the motor carrier service. It will not even concede that the way cars will be left off the local freight trains it intends to continue to operate. It has taken an attitude that indicate it is desirous of having both kinds of operation without any limitations of any effective sort. These are war times. Conservation of effort and elimination of duplication is now the order of the day. This railroad proposes to reverse the trend. Despite the existence of carriers who could furnish the service and despite the fact that the public is not objecting to the rail service it is now rendering it proposes to embark on a wholly new kind of operation. This to secure the right to engage in a keener sort of competition with motor carriers. There can be no justification for this duplication of effort. As the records show there was not enough traffic to and from the small towns the rail says it wants to serve to justify all of the present motor carrier service. The record shows without contradiction that it is necessary for motor carriers to divert traffic from one to the other in order to make it possible for the carrier to conform to present O. D. T. orders. Apparently, the rail road does not propose to pay any attention to those orders. An the present state of the record it is uncontradicted that the railroad cannot comply. It is possible therefore that the Commission will issue an order knowing full well that on the basis of . this record it will require a violation of both the letter and the spirit of the O. D. T. orders. If this is granted the Commission is in effect saying that while independent motor carriers must be restricted and limited such does not apply to a railroad. Here again we have a bad example of discrimination.

If the joint board had not erroneously refused to permit is to be heard on testimony showing bias on the part of every single

one of applicant's shipper witnesses, the record would be replete. with testimony showing that improper reasons and motives were behind the things said to the applicant's witnesses. This fatal error in our judgi ent must either result in a complete reversal of the Examiner's finding or the whole matter must be reopened and set down for further hearing. : Of course with the war conditions as they are, it is our position that there should be no further certificates of this sort granted to any railroad. We press the point, however, that this fatal error by the Joint Board cannot be cured by the Commission merely, rewriting the order granting a certificate. The substantial nature of the testimony we could have produced is evidence in part by the offer of proof we made. The Commission must bear in mind that had the Joint Board ruled properly and had the Examiner observed what we said in our brief the case would now be before the Commission without a single shred of competent shipper testimony presented by the railroad. The case would therefore stand before the Commission unsupported by anything except those things said by the applicant and its parent the railroad. This position of ours was fully explained in our brief but apparently no attention was paid to it.

We think one of the errors the Commission has committed in the line of cases we have discussed has been to accord great weight to anything said by the railroad and the applicant itself. should be obvious that the railroad is the real party in interest in our case just as it was in the Kansas City Southern case. When the railroad therefore advances arguments about why it cannot and will not do business with other carriers, it simply is a self-serving declaration that should be given no probative value whatsoever. Yet in these past cases the Commission has gravely recited what the railroad contended and then proceeded to make a finding of fact as though there had been some evidenceto support those contentions. In our case the rail." presentation before the Joint Board and in its brief has contended vigorously for all of the things we are arguing against here. Yet it did not even bother to present any proof going to show that carriers presently in the field are unable to furnish the service. Will the Commission in the face of that failure make a solemn finding that the protesting motor carriers in our case could not adequately take care of the railroad needs? That is what the Commission did in the earlier cases and that is what the Examiner has done in our case.

If the railroad had produced some considerable proof to show that we could not furnish the service, then there might be a disputed question of fact that could be said to justify some sort of finding by the Commission. Where the rail, ad and the applicant both admitted that they not only knew nothing about the protesting motor carrier's service but did not care to even investigate and indeed went so far as to say they would not do so, it is, of course, impossible for them to contend that we could not furnish the service. No one completely ignorant of the facts can ever state it as a conclusion that something can or cannot be,

Our witnesses, however, were shown to be men with both railroad and truck experience. Some of our witnesses were able. therefore, to testify as experts with respect to the ability of the protesting motor carriers to adequately and completely satisfy the railroad. This they did. In addition, they pointed out that we are furnishing precisely the kind of service here required to another railroad in the same general area. Can it be then that the Commission will agree again with the railroad and say that it is impossible for the railroad to obtain the service without owning the carrier furnishing it? If it does so in this case under the record we made then; indeed, is all hope of successful opposition completely gone unless it is reversed in the courts...

The applicant's offer of proof as to why they did not want to use competing motor carriers is simply a statement of conclusions and reasons that deal only with the convenience of the railroad. It should be noted that not a single one of them has to do with any fact that would go to prove that the protesting motor carriers could not actually furnish the service. Of course, without any knowledge of our service they were embarrassed and could not even make an offer of proof on that subject. At any rate, it is uncontradicted in the record that the protestants could furnish the service but that the railroad without even troubling to find out

about it, simply will have nothing to do with us.

DISCUSSION OF NUMBERED EXCEPTIONS

We turn now to a brief discussion of the twelve general exceptions we made at the outset. Since all our prior argument deals with them, we will only briefly restate some of those things and advance some additional arguments and facts.

1. The Factual Findings Of the Examiner With Respect To What Is Sought and the Manner In Which the Operations Will

Be Conducted Are Generally Entirely In Error.

On sheet two the Examiner makes the statement that "the service is confined to transportation which is auxiliary to and supplemental of the rail service." This is not correct, as a careful inspection of the record will disclose. We developed at great length the fact that much of the reason behind this application lies in the fact that the applicant wants to solicit truck business

generally and will move the freight from many points without any prior or subsequent rail service whatsoever. Their insistence on this point and the Examiner's refusal to impose the usual conditions should be noted. Our brief discusses it at length and

we pray reference to that document.

In line with the statement just made, the attention of the Commission is invited to the following paragraph in the Examiner's report as set out on Sheet Two wherein he says that it is only proposed to transport freight "originating on the lines of the railroad days connections." As the record will show this is not true and what they seek goes far beyond that. Again we pray reference to our brief for a full discussion on that point. The applicant refused to accept such limitation and the Examiner has agreed by refusing to impose that condition.

The Examiner's finding on Sheet Three to the effect that it is proposed to render a more frequent and faster service to the various points along the route is not justified by the record. While there may be a few points to which they have contended they will render a faster service, we challenge that finding. A more important thing to note, however, is the fact that they do not propose a more frequent service in any sense of the word and this finding is therefore clearly far beyond the record. Since it is obviously one of the determining factors in the case we specifically except to

that point particularly.

The Examiner's blanket finding in the next to last paragraph on Sheet Three almost repeating verbatim the statement of the claims of the applicant with regard to savings without citing anything in the record to support it is a particularly bad error. The record will disclose that these claims were shattered and thoroughly discredited before the hearing was concluded. It is particularly harmful to us to have finding of this sort set out in the record without anything drawn-from the transcript to support it. When reference is had to our brief and to the transcript, the force of this objection will be seen. We say flatly that these claimed savings are merely claims and that they did not advance any concrete evidence to support a single one of them.

The Examiner's finding on Sheet Two to the effect that all of the transportation will be moved under bills of lading issued by the railroad is one of the gravest errors in the entire report. As we pointed out in our brief the permission to the railroad and to this motor carrier to thus violate all of the rules of the Commission and plain provisions of the statutes is discrimination in its worst form. There is nothing whatsoever in the statute authorizing the Commission to make an exception in favor of a railroad yet that is advanced as one of the reasons why this authority should be granted. In other words, this report recites that the railroad and

the applicant propose to violate the statute and then that very fact is used as one of the prime reasons why this particular subsidiary of the railroad should be granted the authority rather than to permit the carriers already in the field to furnish the service. We again pray specific reference to our brief because we have discussed it more at length in that document. This is important and we stress it with all the vigor we possess:

We request that the Commission specifically find affirmatively all of those facts we contend for under this exception and those

set out in our brief.

2. The Finding By the Examiner Thas Supplementing the Evidence Of Applicant and Railroad Employees Forty-two Shipper Witnesses Representing Various Businesses At Points Located On the Proposed Routes Testified As To the Necessity For and the Convenience Of the Considered Services."

This finding is so far contrary to the record it is difficult to find words to express ourselves. Reference to the record will disclose that only four of the shipper witnesses were placed on the stand. It will show that not a single one of them testified at any point in any particular that there was any actual need for the service. On the contrary, each and every witness testified that the rail service they were presently receiving was adequately caring for their needs. We have discussed this so thoroughly and we have made the point so plain in our brief we cannot understand how anyone. could read the record and then condense the substance to a single sentence of this kind. Public convenience and necessity as we. have pointed out requires a showing on both convenience and neces-The witnesses for the applicant merely testified that it would be to their convenience to have a faster service than that presently received. It cannot be said that they have thereby also said that there is a distinct need for the service. When these same witnesses admit that the present rail service does meet their needs we are unable to understand how anyone could make the statement we find here. When consideration is given to the further undisputed fact that all of their witnesses have admitted that it would make no difference to them whether the applicant or these protestants handle the business it is impossible to conclude that there has been any necessity of any sort shown by any of the testimony Since this will unquestionably be considered in. in this record. any further steps taken in this matter, we earnestly ask the Commission to go over the testimony again and to give consideration to the argument we have made in our brief on this point. See also our citations and discussion earlier in these exceptions.

We request that the Commission find that the applicant did not present any shipper testimony showing any necessity for or any

convenience to be served by the service proposed.

3. The Finding Of the Examiner Set Forth On Sheet 4 That These Witnesses Testified That "Such Service Would Be a Decided Convenience To Them."

This finding by the Examiner is simply a repetition of the statement he made at the bottom of Sheet Three and discussed immediately above. We challenge anyone to find any statement by any of their witnesses that the proposed service would be "a decided convenience to them." As we pointed out above, they all quite naturally said that any improvement in the service they were now receiving from the railroad would be acceptable to them. Not a one of them said it was necessary. More important, however, is the fact that none of them advanced any reason why the added convenience was of importance to them. Indeed, their testimony quite clearly shows that there is merely a willingness on their part to have the railroad improve the service by any means that it commands but at the same time agreeing that it is not important whether this is done or not.

We request that the Commission find that no one of applicant's witnesses has testified that there would be any decided or particular convenience to them. That instead, they all indicated present rail service is adequate and satisfactory and that there is no need for this additional service.

4. The Statements By the Examiner On Sheets Two and Three That He Gave Consideration To Another Application By This Applicant and That Facts In That Case Were Partially Responsible For the Determination Of the Issues In This Case.

The Examiner has gone far beyond the record and based his decision in the main on facts of record in a totally different case. None of that material is in this record and was not considered or discussed at any time during the course of the proceeding. the Examiner at the bottom on Sheet Two and the top of Sheet Three has made it plain that be is basing his order on the belief that the Commission, having arready considered certain facts in other cases and reached a decision, he need pay no attention to the facts in this case. He goes out of his way to point out that the operations are presumably the same and the conditions the same without in any way showing where the parallel lies. He then says that no discussion of the important element he is thus giving great weight to, need be even considered or discussed. amounts, to saving that the case was already decided before it was heard and that no useful purpose will be served by discussing it. We propose to make a point of this because we think it indicates that our apprehensions as expressed in the brief were The applicant throughout the proceeding indicated that he felt he had the case already won before it was tried on the basis of precisely what the Examiner has now said. This is

not fair and we submit that it is not in accordance with due process or the rules of the Commission. We ask that our brief be read carefully in connection with the entire case as it applies to this point. This has been a particularly grave exhibition of disregard of the record and we feel that the entire matter should be reopened and gone into thoroughly before any final disposition is made.

We request that a finding be made that the prior cases he has mentioned are not to be considered in disposing of this case be cause neither the factual situation nor the law in those cases have

any application to this case.

5. The Examiner's Error In Excluding the Limitation Heretofore Imposed On the Railroad By Giving Consideration To Facts Of Record In Other Cases But Upon Which There Was No

Showing In This Case, As Set Forth On Sheet Three.

In the second paragraph on Sheet Three, the Examiner points out that a certain condition which had been imposed in another case had subsequently been removed by the Commission. condition has to do with the necessity that the shipment move on a through bill of lading and that it have a prior or subsequent move by rail. This error is much on the same order as that discussed immediately above. If anything, however, it is even Here the Examiner has specifically stated that the Commission in another case in nowise connected with this proceeding has reached a certain conclusion. He has then proceeded to apply that conclusion to his findings here without any discussion or finding whatsoever as to how or why that is possible or permissible. He has said in substance that having considered facts in another case he will apply the findings in that case to the disposition of this one without in any way indicating at any time wherein there was any parallel between the factual situations of the two cases. 'Actually in our case we have demonstrated clearly that the situation is entirely unlike any other before the Commis-Our chief complaint on this point, therefore, is that in addition to deciding it on the basis of something that has been done in another case, the Examiner has fallen into the fatal error of saying in substance that it is not even necessary to review the facts in our case. He has brushed aside practically all of the evidence and reached a conclusion on the basis of evidence produced in a case in which the Commission has reached a certain conclusion and in which none of these protestants took any part. due process has been so abused in these findings that it should be apparent without further argument. There is no shipper evideuce to support the finding and no proof was presented by the applicant itself.

We request a finding that the order, if it is to be granted, should contain a limitation restricting the applicant to transporting less than truck load merchandise having a prior or subsequent rail movement only and to and from the small intermediate towns only.

6. The Finding Of the Examiner That the Protestants "Take the Position That the Existing Motor Carriers In the Considered Territory Should Be Afforded Opportunity To Improve Their Present Service and Facilities Before Authorization For New

Service Is Granted."

This finding has no support whatsoever in the statements made anywhere in the record by any of the protestants or their counsel. It completely misconceives our position and makes a fundamental error upon which the opinion and finding has apparently turned. Our position as protestants was that we are presently engaged in actually furnishing the precise kind of service proposed in this application. At no point is there any evidence that we are not doing so. There is not a line of proof that we want an opportunity to improve our service but on the contrary that we are presently rendering the precise type of service contemplated in this application.

The fundamental error made by the Examiner is the assumption that our present service would necessarily require some change in order that we might be in a position to furnish the service. The subsequent findings of fact as to our position do not square with this sentence but since he has made the statement set out above, it is obvious that he has jumped to the conclusion that we are not presently in a position to furnish whatever type of service is required. Of course it is sheer nonsense to take the position that the service here contemplated in anywise differs from the service ordinarily rendered by common motor carriers. The statement by the Examiner, however, is quite obviously a finding that there is a difference. Since this goes to the very heart of the case and since it is precisely in line with some rather loose language used by the Commission in other decisions, we challenge it specifically because it is obviously not supported by a single line of testimony.

This specific finding coupled with the failure of the Examiner to make a finding that we do have facilities for and presently are rendering the precise kind of service described by the applicant makes the whole finding doubly defective. It indicates that either the Examiner has failed to read the transcript and our brief or that he has for some reason we cannot fathom, deliberately chosen to omit the most vital part of our case from his finding and at the same time make another finding wholly contrary to the facts of record. Nothing can cure this error short of a complete recon-

sideration and a new hearing. It is so vitally important we insist that we are entitled to oral argument first and then another opportunity to go into the matter at length.

We request that a finding be made that the protestants take the position that they are in a position to and can furnish the service

described by the applicant and the railroad,

7. The Finding and Conclusion Of the Examiner As Set Forth On Sheet 4 That "Upon Consideration Of All Evidence Of Record, the Examiner Concludes That the Record Amply Warrants the Granting Of the Authority Sought Subject To the Conditions Imposed By the Commission In Kansas City Southern Transport

Company, Inc., Common Carrier Application, supra."

This finding or conclusion by the Examiner is, of course, the nubbin of the case. Immediately above this finding he has given the protestants the benefit of only a short paragraph of discussion of our evidence. He has not covered it with any particularity whatsoever and has omitted most of the important things we developed. We think the finding is fatally defective on that score However that may be, it is important to note that the Examiner has plainly found that there are carriers already in the field capable of handling the movements and furnishing the service required. This, however, is waived aside again by simply saying that proof of this sort was presented in other cases and that whatever was done with those cases will be done here. substance amounts to saving that while it is clear that existing carriers can furnish the service the railroad is going to be permitted to have its subsidiary start a new operation regardless. We have gone into this thoroughly and completely in our brief. We submit that there is not the slightest support in the record for the Examiner's conclusion. On the contrary we submit that his precise finding; sketchy as it may be, concerning protestants' service is in itself sufficient to warrant a reversal of the finding.

Unless the finding is reversed then it can only be argued that the Commission is taking the stand that when a railroad is involved one measure of proof is to be used and that where an ordinary motor carrier seeks an extension another measure is to be adopted. Indeed applicant's counsel made such a claim during the hearing. This is discrimination of the worst kind and as we have pointed out in our brief, we cannot permit it to stand without challenge. The Motor Carrier Act becomes without meaning it is only necessary for a railroad to come before the Commission with its child in hand and automatically receive a grant of authority even though the carriers already in the field are ready, willing and able to furnish the service. The last decisions of Division 5 on this point which we cited in our supplementary brief of August 19th are precisely in point with what we are saving. We

cannot understand how the Examiner has been able to reach this conclusion in face of the findings of the Division in these two last cases. We earnestly pray reference to our brief and the earlier argument in these exceptions for a more extended discussion of this point under this exception.

We request that a finding be made that upon consideration of all evidence of record the Commission concludes that there is no evidence warranting the grant of any of the authority requestedand that the doctrine established in other cases is not applicable.

to the facts in this case.

8. The Examiner's Failure To Give Any Weight Whatsoever To the Undisputed Evidence That There Are Sufficient Carrier's Already In the Field Presently Furnishing the Same Sort Of Service To the Pere Marquette Railroad and Who Could Also Furnish Such Service To the Pennsylvania Railroad In This Case.

This point quite naturally is an extension of the objections made in the immediately preceding subdivision. It is quite obvious that the Examiner has not only failed but has deliberately refused to give any weight whatsoever to the undisputed evidence produced by the protestants. He admits this when he says that such evidence in other cases did not prevent the issuance of a certificate. We have the benefit of only a short summary of our evidence set out by the Examiner. While he has devoted approximately three pages or more to summarizing the position taken by the applicant, the Order only accords us the benefit of one paragraph. However, that may be; the fact that he has agreed that we do have adequate service available indicates that he knows that to be the fact. When he immediately concludes that the new service is required by public convenience and necessity he is therefore admitting that this testimony is of no weight whatsoever in this case.

It is our position the the Commission, in saying that a railroad or its subsidiary may be accorded the right to institute a new operation despite the existence of adequate transportation facilities, is interpreting the statute to mean that special privileges are to be accorded a railroad. With this, we violently disagree. Where as in this case it is admitted that the protestant carriers can furnish the service and where there has been no effort made to show that it would not be just as satisfactory as that proposed, any conclusion that public convenience and necessity requires the grant of authority can only be reached by ignoring all of the evidence given by the protestants. In other words, we might just as well have taken no part in the proceeding insofar as the Examiner's report is

concerned.

The only thing that protestants can show in a case of this kind is that they are capable of furnishing this service and are ready and willing to do so. The Examiner has agreed that we made such

a showing. He has found this to be true. Any finding that public convenience and necessity requires the operation, therefore, simply has to be based on a complete disregard of all such proof. This is never done in any other type of case where a motor carrier is involved. We, therefore, make the point that the Examiner's proposed report and order violates the Statutes and does not accord us any consideration whatsoever.

We request that a finding be made that the protestants are not only presently engaged in furnishing precisely the same kind of service to the Pere Marquette Railroad but have shown without contradiction that they could do so for the Pennsylvania Railroad

here as well as or better than the applicant.

9. The Examiner's Finding In General That the Proposed Authority Is Warranted Despite the Fact That the Record Is Without Any Supporting Evidence Whatsoever Going To Show That the Public Convenience and Necessity Actually Requires the Service. These Protestants Have Been Denied Due Process In Many Particulars.

In our brief we discussed at great length the fact that in this case these is absolutely no proof that the public or any part of it actually needs or requires the proposed service. As even the applicant will be forced to admit, the only thing to be found in the record to support any kind of an order is a claimed showing by the railroad that this may save them some operating time and possibly some expenses. While we disputed these points and, we think, proved this not to be true, it is not necessary to resort to any argument over disputed facts to conclude that there is no showing of public convenience and necessity.

We need only to look to the fact that all of their witnesses including the representatives of the railroad, talk entirely of convenience to the railroad. It is impossible for anyone to review the testimony of the four shipper witnesses they examined or the balance upon which we made a stipulation, without understanding that this record is completely barren of any proof going to show that anybody actually needs the proposed service. Again we pray that our brief be looked at carefully because we have gone into this at such length and have so paintakingly analyzed the evidence that we want to make sure that the Commission checks it carefully in passing on these exceptions. This case will undoubtedly not terminate quickly because we do not believe that the Kansas City Southern and other cases are at all in accord with the law. But whether they are sound or not is only a secondary point in this case. While we can see that the Examiner has decided the case on the basis of the doctrine established in those other cases. in our situation we have an entirely different set of facts. In those other cases there is claim to be some proof of a public need. Again

we repeat that in this case there is not a single line of testimony by anybody indicating any need whatsoever for the service. Indeed the testimony with respect to convenience of some of the shippers is too weak to be said to have established anything.

As we have pointed out elsewhere herein and in our brief, where it is clearly shown that there are carriers already in the field ready. willing and able to furnish the service and applicant may contend is needed, the Commission cannot lawfully authorize the entry of a new carrier into the field. Even if a service is needed it does not follow that a new carrier is required unless it is shown that those in the field cannot furnish the service. Apparently the Commission in other cases has taken the position that it makes no difference whether this service is already available or not so long as the railroad simply indicates that it will make no use of it whatsoever. . That is the legal position taken by the railroad in this case and we had warning throughout the hearing that they were going to rely on that precise doctrine. They have succeded in convincing the Examiner that that is sound law. We challenge it because in every other case involving a motor carrier the Commission has always held that a showing that other carriers could furnish the service was, in and of itself, sufficient to defeat any applicant seeking a new certificate regardless of what else may be in the record. Applying that universally accepted doctrine to our case, we find that the Examiner has agreed with us that our service is available and would meet the need. Yet in face of that finding he then: proceeds to the outrageous conclusion that, nevertheless, the applicant is entitled to the right. In plain English, had he chosen to speak frankly he would have said "So long as a railroad is involved it is not necessary to show the things that ordinary motor carriers would be required to show."

In our case, however, unlike in the other railroad cases, we were able to show that the protestants are actually furnishing the precise kind of service described, for another railroad operating in some of the same territory involved in this application. The Pere Marquette Railroad has entered into an agreement with a number of these protestants whereby they are required to furnish precisely the same kind of so-called co-ordinated station-to-station service contemplated in this application. Of course the order does not restrict the applicant to such but even if it did we could supply it. While we think the Commission was clearly wrong in the other cases in some of its conclusions, it should be obvious that under this set of facts the Commission cannot conclude that this is some strange kind of new service that the protestants are not now furnishing and therefore could not furnish to the railroad involved in this proceeding. Instead it is undisputed that we

not only can furnish such service but are actually doing so. In other words, the factual background purportedly set up in those other cases is not only lacking in this case but its very opposite is shown by proof that the applicant did not even trouble to challenge. Under such circumstances, therefore, the entire showing on public convenience and necessity, must resolve itself down to a mere claim that the railroad simply will not do business with anyone not owned by itself. In the last analysis this grant of au-

thority must turn on just that and nothing more.

As we pointed out in our supplemental brief the Division had before it a case on all fours with this one, on another application by another subsidiary of the Pennsylvania Railroad. In that case, as we have pointed out, the Division reached the conclusion as the Statute obviously requires, that it could not authorize a grant of a new certificate where the record clearly shows that present carriers can furnish the precise kind of service required. See pages 1 to 5 of our A gust 19, 1942, brief. That particular case bears out everything we are saying here. The only difference in the two cases lies in the fact that in our case a goodly number of protestants are in a position to furnish the same kind of service and are actually doing so. In other words, in our case the record is many times stronger from the standpoint of the protestants.

If the Commission will trouble to look at the appendix to the Order it will be seen that this is not a simple case in which the applicant is asking for very little in the way of authority. The operations extend all the way from Fort Wayne on the south to Mackinaw City on the north with several side routes involved. The mere description of the route occupies three full pages of the This authority based upon the showing here made would never be granted to any ordinary common motor carrier without a snowing of such prodigious strength as to be impossible in this area and in these days of war. Indeed because of the service already available we seriously doubt whether any regular motor carrier would ever be able to justify the grant of even a fraction of the rights here sought. Yet the Examiner has tossed off the protestants' showing of adequate service without giving it any consideration whatsoever other than to mention the fact that we had made such a showing. If such a finding had been set forth in an Order involving any other class of applicant the conclusion would have unmistakably been a denial. If the Commission can' find any case in its files where there has been a finding that the present service already in the field could handle the business and yet has granted the authority, it has not yet come to the attention of these protestants.

Let us now pause and take stock of the situation on the issue of public convenience and necessity. The applicant has presented

railroad witnesses who have testified that some advantage will accrue to the railroad. Those claims were exploded by our own They then presented four shipper witnesses who testified from the stand and 38 on whom stipulations were made. Every one of them has testified that their present railroad service is meeting their needs but have concluded that they would be convenienced by any improvement in that service. They did not complain, however, about the present service. They have admitted that the motor carriers serving them are furnishing this service and no complaints can be found anywhere in the record concerning the service of any of the motor carriers already in the field. That constitutes the entire showing by the applicant. On the other hand the protestants have shown they are ready, willing and able to furnish the precise kind of service here involved. Indeed they have shown they are presently rendering the precise type of service to the Pere Marquette Railroad in the same general territory. One of the routes sought is being served in part by a motor carrier operating for the Pennsylvania Railroad. They have shown that the Railroad has been approached by these carriers but that all their efforts to obtain the business have been rebuffed without a discussion.

The Railroads in their testimony arrogantly took the position that it was not only not necessary for them to discuss this with any existing motor carrier but that they would not do so under any circumstance. Indeed they said they, would not use the service of other motor carriers even if it should be superior to that they proposed through the use of this applicant. Of the greatest importance is the railroad boast that they knew nothing of present motor carrier service and did not intend-making any investigation into it. Their witness not only said he did not know about our service and had not investigated it but went further and said "we are not interested in that" (562). He was forced to admit that one of the protestants could furnish the service (559-561). statements coupled with the statement that the railroad would not use the protestants even if their service was superior to that proposed (627) ought to be enough to convince anyone that there is no foundation for any claim that this proposed operation must be handled by a new carrier. Summed up, therefore, we have confronting us an undisputed set of facts that even the Examiner was compelled to admit showed the existence adequate service amply able to take care of all of the needs involved. With an application of this size is it possible that the applicant expects the Commission to simply say that there is some insterious unspoken reason governing them in cases of this kind that compels them to bow to the will of the Pennsylvania Railroad! We are sure that

when the Commission sees the record and analyzes it as we have done it will reverse the Examiner and deny the application.

We request that a finding be made that the application should be denied in its entirety because the applicant has failed to prove any of the necessary elements of public convenience and necessity. That protestants are in a position to and could furnish the service requested. That in the face of such uncontradicted evidence the Commission cannot authorize an additional carrier in the field. That any finding other than a denial would be discriminatory and would be contrary to the statute and a denial of due process of law.

10. The Grant Is Based On a Discriminatory Application Of the Statute.

The discussion under the above subhead and that set out in our brief is enough to establish the point we now seek to make. If the Commission in the face of the record made in this case, is going to say that a railroad is entitled to this authority even though there is adequate service available then it obviously is applying the statute in a way that discriminates against these carrier. It cannot say the statute means one thing when a motor carrier is before it and another thing when a railroad is somewhere in the background. Yet in our sober judgment the Kansas City Southern and some of the other cases have by indirection said precisely that thing. We do not believe the Commission has quite realized what it has seemingly said or has given consideration to the fact that its decision in those cases amounts to completely denying motor carrier operators all opportunity to oppose the grant of any authority sought by a railroad or its subsidiary.

Let us explain what we mean. No protestant can oppose the grant of a new certificate on any substantial ground other than that the protestant is able to furnish the service being sought. If there is any other ground except an attack on the financial ability of the applicant it has not been called to our attention. At any rate. that is the only thing the Commission can weigh as we interpret the statute. In this class of cases however, the Commission, has completely denied to motor carriers any such right of opposition. While the language in the other cases referred to by the Examiner. does not say so in bald terms, the meaning is that any protestant motor carrier might as well save his time and money if a railroad seeks a new certificate. This is true in our case because we have met the burden of showing the existence of adequate service and the Examiner has found that it does exist yet on that foundation has concluded that the railroad should be granted the right its subsidiary seeks. This we contend, is a denial to us of our rights under the statutes and amounts to the discriminatory application

of the law. The Commission probably has not noted that its Kansas City Southern and other decisions have said just what we have indicated, yet if it will trouble to inquire among all of the motor carriers in the United States who have any knowledge whatsoever of those cases it will find that without exception, those carriers are of the opinion that those decisions by the Commission are saying by indirection precisely what we have indicated above. We challenge the applicant in this case to discuss this point directly and point out wherein those decisions say anything else. We would note with interest, any indication by the applicant that there is. any possible way that a motor carrier profestant could defeat the request for a certificate by a railroad or its subsidiary under the doctrine described in those other cases and now completely adopted in ours. We know the applicant will not challenge this because it arrogantly asserted this to be the fact throughout the case. We think this should be thoroughly tested but we earnestly ask the Commission to reconsider what we think an unsound position and announce the correct doctrine in this case. While, of course, we are sure that our factual situation is different and that the Commission can upset the Examiner's report, without directly reversing those other cases, we think that it should do so if for no other reason than to announce a more sound interpretation of the statutes. ..

We request that there be a finding that the same measure of proof applies to applicants owned by railroads as to all others and that the same showing of a lack of present adequate service is equally required in this type of cases. That the Commission is not of the opinion that a rail owned applicant can obtain a certificate without making precisely the same sort of showing required of all other, applicants.

11. The Many Errors Of the Joint Board in Admitting and Rejecting Evidence Noted and Discussed In Our Brief Were Not Mentioned and No Factual Findings Were Made On Any Of the Many Important Points Thus Raised In the Trial Of the

Proceedings.

We made a great many objections to the admission of evidence. When we sought to present other material evidence the Joint Board ruled against us. We pray reference to the transcript and to our brief fon particulars. To conserve time and space we now incorporate all of those objections to the receipt of evidence in these exceptions and make them a part hereof. We shall not discuss at length all of those set out in the record and in our brief but we do ask the Commission to take particular note of the two following outstanding examples. We press all of our objections, however, and discuss the following only as examples.

As we have noted in our brief at the last hearing in the cause. we sought to present evidence going to show that each and every. witness produced by the applicant had been induced to testify by something other than a desire to advance the cause of justice. We had a number of questions to ask our witnesses going to show that during the interval between the hearing the witnesses for the applicant had admitted that they had been present at the initial hearing for reasons that had to do with something other than a need or desire for service. Such testimony was competent aidwould have served to completely demolish every line of testimony given by the shipper witnesses presented by the applicant. The denial of our right to show the bias on the part of the witnesses for the applicant is fatal and we now ask that the entire order be set aside and proper proceedings taken to reopen the matter for this cause alone. The Examiner did not discuss this or any of the many other errors on the part of the Joint Board and this also is fatal error because there is no finding with respect to the objections we stressed in our brief. We made a number of efforts to induce the Joint Board to permit us to go forward with this line of testimony and even made an offer of proof but could not get before the Joint Board or the Commission all of the proof we had in that regard. This is because the Joint Board announced that we could not put on other witnesses dealing with the same subject. We therefore, in deference to the ruling, desisted from further efforts along that line.

Over our objection the applicant was permitted to present a great deal of evidence dealing with claimed advantages to the railroad. We insist that this was fatal error because it is clearly not competent for an applicant to thus hoist himself by his own boot straps. The applicant is owned by the railroad. The testimony that the parent will benefit by the actions of the child if the authority is granted is clearly not competent evidence to prove anything. Yet the whole order hangs on that testimony. We vigorously sought to exclude it but without success. We shall not labor at greater length to discuss all of the many other errors of this sort but we want to point out that these two in particular have violated due process in the most flagrant example of favoring a railroad that has come to our attention. We ask therefore, that the findings of the Examiner be set aside and the entire matter reopened if our concluding prayer is not first granted.

We request that a finding be made to the effect that the Joint Board made numerous errors in both rejecting and admitting evidence. That it committed reversible error when it refused to permit protestants to show that all of the railroad's shipper witnesses were biased and prejudiced. That the receipt of evidence

going to show some advantage accruing to the railroad was erroneously admitted. That the errors claimed by protestants warrant a reversal of the Examiner's report.

12. The Failure Of the Proposed Report To Limit the Authority

To Less Truck Load Traffic.

The record is undisputed on the point that the applicant was seeking only the right to handle less truck load traffic. This was emphasized throughout the proceeding. At the very outset the witness Christie explained carefully that only less car load freight was involved. See page 37. The whole case was based on that contention. It is, therefore, rather astonishing to find the Exammer failing to recommend that any authority granted be restricted to such traffic. The statement by the various representatives of the railroad and the applicant as well as their counsel amounted to an amendment of the application. Many of these statements were made because we were insisting that they were seeking authority to handle both kinds of traffic. The statements they made were directed toward lessening the opposition by minimizing the importance of what they sought. It is, therefore, beyond dispute they were seeking only the right to transport less truck load traffic to the small intermediate points if we are to believe what they claimed. Since this furnished the main basis for the request for authority it surely will not now be disregarded.

We do not, of course, admit that they are entitled to any authority whatsoever. We point out this error because we think it evidences a state of mind that has prevented due consideration being given any of the points we have raised. We submit that this error is in line with the general contentions we made throughout our brief. While the order contains some language that sounds as though the applicant could not transport freight which originated off the rail line or which was not to have a subsequent rail movement, it is significant that the language normally used was omitted exactly as the applicant requested. The direct language that could have accomplished that purpose was omitted and instead some use of the word "auxiliary" was made. When the Examiner says that the service "shall be limited to service which is auxiliary to or supplemental of rail service" he is using what we can only term weasel words. The restriction means exactly nothing and permits the applicant to perform any kind of truck service it. desires. We cite this fact because it is part and parcel of the. whole theory on which the case has been handled and disposed of.

We request that the Commission find that if any order is to be authorized it must be limited to transporting less truck load traffic. That all movements be restricted to the small intermediate towns only and conditioned upon a prior or subsequent rail movement. That, however, there has been no proof submitted warranting the grant of anything.

GENERAL DISCUSSION

This case presents an issue that should be determined on its merits without reference to any prior decision of the Commission. We dislike attacking findings made by the Commission in other cases under different sets of facts, yet since this case has not been given dispassionate consideration without reference to those other cases it becomes necessary for us to review the whole line of cases including the Kansas City Southern case to point out to the Commission the fundamental errors it has committed in allowing itself to be misled into its present position.

Briefly stated, the facts in our case are that the railroad has had its subsidiary seek a large number of extensions after refusing to have any dealings whatsoever with any of the motor carriers amply equipped and ready to furnish the kind of service the railroad claims it wants. In presenting its case, its proof has been relatively short and simple. We summarize that here in numbered paragraphs condensed to give the Commission the only important elements they have proved.

1. The Pennsylvania Railroad desires to transfer some less truckload merchandise to trucks for movement to points intermediate between two main so-called key points.

2. In obtaining this service the railroad is unwilling to enter into any arrangement with any carrier already in the field even if that carrier's service is superior to that it proposes.

3. The railroad will continue to handle its merchandise in a local freight train over the same route and merely proposes to leave off the so-called local car unless some-of the customers insist on having rail service. In other words, they propose a duplication of effort.

4. The shippers along the road admit that the present rail service adequately meets their needs and had no complaint 10, make about the character of the service they are receiving.

5. No witness for the railroad testified that there is any need for the service but agreed that it would be convenient if the rail service should be speeded up. No reason or fact was presented in support of those conclusions.

6. The railroad witnesses testified that under their theory the service would be speeded up to some points but not to others and gave no indication as to what the overall picture actually would be.

7. The railroad did not have figures as to the tonnage available for movement and refused to produce it. The Commission.

refused us a subpoena duces tecum and we were thus unable to. get before the Commission any facts as to the precise tonnage that would be involved.

8. The protestants showed, without any attack being made on its claims, that the railroad would experience the same difficulties experienced by any other truck line and that the claimed

savings of time could not possibly be achieved:

9. The protestants showed that their service is presently being offered to the railroad without success. That the Pere Marquette Railroad, however, has entered into agreement with several of the protestants and that the precise kind of service involved in. this proceeding is being rendered in the same general territory for another railroad willing to enter into such an arrangement. 10. It was shown that the tonnage to and from the small points involved is not sufficient to justify the present available motor carrier service and that the entry of another carrier would further complicate the situation.

The foregoing paragraphs set out in substance the main elements in the record. It will be seen that there is not a line of testimony anywhere in the record going to show that there is any actual public need for the additional service proposed whether furnished by the applicant or anyone else. Not a single shipper witness presented by the railroad even hinted at any need, much less explain how that need arose. As it stands therefore, it is uncontradicted that the applicant has not shown any necessity whatsoever. On the other hand their own witnesses have admitted that the present available service by the railroad is ade-

quately and satisfactorily serving them. On that foundation of sand, the Examiner has then based the conclusion that public

convenience and necessity demands the additional service. The showing made by the protestants was not even challenged by the applicant. It is uncontradicted therefore, that the protestants not only are ready and willing to furnish the service but that they are actually doing so for another railroad. In addition it was shown that a small motor carrier is furnishing part of the service presently but that he will be ousted in the event this is granted. There is absolutely no explanation given why this would be done and no complaint entered about his service. Because he is not owned by the railroad however his throat is to be unceremoniously cut when and if this order becomes effective.

We have gone into more detail in our brief to which we have repeatedly prayed reference. The foregoing, however, will highlight the situation and has been set out as a prelude to what we are now about to discuss. It is the position of these protestants that the Commission has no statutory authority to grant any new certificate to any carrier unless there has been an adequate showing that public convenience and necessity both require the new grant of authority. We take the position that where it is shown that other carriers can and will furnish the service the Commission cannot justify the grant of a new certificate under any circumstance. It is our position that in situations like that involved in the Kansas City Southern case, the Commission has committed a grave error and has in effect deprived protesting motor carriers of the right granted them under the statute.

Let us speak plainly so that our meaning may not be mistaken. In the present case, the applicant has justified its request for authority by merely showing that it is willing to do business with a railroad which refuses point blank to have any dealings with any carrier not owned by itself. This is true even though the protestants have been shown to be able to furnish a service equal or superior to that proposed. We contend that under that set of facts, the Commission cannot possibly justify the present grant of authority. We take the position that there is not only nothing in the record in this case, but there has been nothing in the reasoning used by the Commission in the other cases to justify its conclusion that the railroad or its subsidiary should be granted a new right.

"If we read the other cases correctly, the Commission has attempted to say that there is something different in the series proposed when the traffic moves by rail to a certain point and thereafter goes to destination by truck. (Here the service sought and granted is not so limited.) This we challenge and believe that there is no justification for such a finding in any of the prior cases. Whether that is correct or not, however, it is certainly true that in our case there is no factual foundation for any such conclusion. However that may be, even if there was some justification for such a conclusion, we have shown without challenge that these protestants are furnishing the kind of service proposed and could do so for this railroad. That reduces the case therefore to a very simple situation. It means that in order that this may be justified it is necessary to conclude that no protestant or group of protestants can ever defeat a request for authority by a. railroad and its subsidiary under any circumstance. Let us explain what we mean.

It goes without saying that under ordinary circumstances where carriers not owned by railroads are involved a certificate will not be granted if the facts in the case warrant a conclusion that the carriers already in the field are ready, willing; and able to furnish the service. If that is not the substance of every other decision by the Commission where motor carriers not subsidiaries of railroads are involved then we cannot understand the Commis-

sion's decisions. Assuming that that is the situation it will be seen that in this and similar cases the Commission, despite all the round-about language it has used, has in effect said simply this: "Where a railroad refuses to deal with carriers able to furnish the service, that fact alone justifies the grant of the new certificate." If there is any other basis for the grant in this case, then we would like very much to have it brought to our attention. We believe that the Commission in reviewing the facts in the other cases has been brought to its strange conclusions on some theory that apparently has not been stated very clearly. We have analyzed all of the cases carefully in an effort to find something in them that would justify the grant. We candidly confess that all we can find is the general conclusion by the Commission that this so-called coordinated rail-truck service (whatever that may be) is ome new and strange kind of service that has never been performed by any motor carrier presently in the field. From that erroneous conclusion they then jump to the final conclusion that that fact alone justifies the grant of a new certificate. They have completely overlooked the fact that in so doing they are disregarding all rules of law or logic. The Examiner in our case betrays the fact that that is what the Commission is trying to say when he inadvertently made the finding that we protestants were taking the position that we should be given an opportunity to improve our service before a new certificate is granted. This conclusion by the Examiner is not justified in our case and we believe we can safely say it is not justified in any of the other cases. even if it is justified it certainly furnishes no excuse for granting a new certificate. It would not be used as the basis for a certificate where an independent motor carrier is involved and it never has been. It is for that reason that we claim that the Commission has made a discriminatory interpretation of the statute and: has applied it in a manner not warranted by anything found in the statute or the constitution.

We have said above that if the Commission's interpretation stands, no motor carrier could ever successfully oppose an application by a railroad or its subsidiary. We mean precisely what we say. As we have tried to argue in our brief and elsewhere in these exceptions a protestant can only oppose the grant of a new certificate by showing that it is ready, willing, and able to furnish the service. When that showing is completely ignored and the Commission specifically finds that that makes no difference, then our hope of preventing the railroads from duplicating every mile of trackage throughout the United States is gone forever.

In one of the recent cases decided by Division 5, the Commission said in substance what we have been arguing in our brief

and in these exceptions. In that case the Division had this to say:

"Conceding this public need, the controlling question is whether or not there is already available a motor carrier ready, able, and willing satisfactorily to supply such service for the railroad. If so, there is no need for applicant's added service in this respect." (Sheet 2.)

That doctrine is sound and is precisely in line with the findings found in many of the cases involving motor carriers not connected with a railroad. It indicates to us that the Division on inspecting a record where it is clear that the protestants can furnish the servi ice is not blindly following the doctrine announced in the Kansas City Southern case and concluding that the order should be affirmative merely because a railroad is involved. In another case considered at almost the same time by the Division, the same general conclusion was reached with an additional finding that is extremely important. We refer now to the case entitled Railway Express Agency, Inc., Extension-Jackson-Saginaw, MC 66562. Sub. No. 380. In that case, the Commission points out that where the railroad could obtain the service by the use of some of the bresently operating passenger trains, that should be done. That the difficulty in using that service to handle express did not justify the grant of a new certificate,". These two cases together go far to establish the soundness of the arguments we have been making. They certainly establish the point that where it is undisputed that the protestants are ready, willing, and able to furnish the service. there can be no justification for a grant of a new certificate merely because a railroad wants it. We assert again that if this order. is permitted to stand it can only be justified by the assertion that a railroad wants a certificate and that that fact alone is sufficient to justify its issuance.

In asking for oral argument we want to discuss not only the points raised in these exceptions specifically but the many other errors by the Joint Board and Examiner in admitting and rejecting evidence. We want also to be in a position to point out to the Commission the fallacy of many of its conclusions in these other cases which the Examiner has held to be controlling. Some of the language used by the Commission seems to us to be seriously prejudicial to all motor carriers and we think it is time that these things were bluntly called to the Commission's attention. There can be no doubt about the fact that the effect of the prior findings plus the one in this case is going to be to permit the railroads to obtain unlimited motor carrier operating authority in open competition with other motor carriers without any showing whatsoever as required of other motor carriers. At an oral argument, it will be possible to point out some of these things in better

fashion and for the Commission to interrogate us with respect to the contention that we and others have been making. We believe the Commission intends to enforce the statute fairly and equitably but we must assert with all the vigor we possess that it definitely has not done so in this particular case. If the Examiner is to be sustained, then the injustice perpetrated in the other cases will be more firmly entrenched than ever. For that reason, we endeavored to make a careful record and we asked the applicant to cooperate with us so that in any further tests there might be no question of fact involved. We think the case will turn squarely on the legal points we have raised in these exceptions. Since we think the Commission will be open minded on the matter but since it is obvious that we cannot hope to get across all of our arguments without presenting them orally, we have earnestly endeavored to give to the Commission as many reasons as possible why that privilege should be accorded us.

CONCLUSION

A great many other errors could have been pointed out in specific detail. Since we have incorporated our brief in these exceptions we have refrained from repeating what was said there as far as it was possible to do so. Our failure to repeat many of the things there found is not to be taken as any indication that we do not regard them as equally important with the things discussed above.

This case we think presents an opportunity for the Commission to reexamine the bad doctrine and precedent established in some of the other railroad cases. We think it time for the Commission to pause and take stock of the situation. As we have endeavored to argue in our brief and in these exceptions, the Commission has in substance said that there is no method that can be followed by any of the protesting motor carriers that will in any way operate to defeat an application filed by a railroad or by its subsidiary. We therefore urge that the Commission review its past orders and with what we have said in mind again look to the statute and to the factual situation in our case.

In this case, we find such a tremendous issue involved, we earnestly ask the Commission to grant us the privilege of oral argument. We feel that a case of this importance should not be perwitted to go any higher without affording both sides ample opportunity to question the stand of the Commission before it in person and in turn be subjected to the interrogations that always come from the bench. The manner in which the decision slights many of the important elements in the case cannot very well be set down in the confines of these exceptions. Oral argument is about the

only method that can be used in acquainting the Commission with many of the problems involved. In the other railroad cases the different factual situations we have mentioned may, or may not have justified the grant of authority for some reason other than that advanced by the Commission. In our case, however, we pray an opportunity to demonstrate that even if that doctrine is not revoked, it should not be here applied. The recent decisions of the Commission we have referred to agreeing with our conclusion warrant our asking for oral argument on that ground also. We desire an opportunity to show in detail how the factual situation closely parallel these late cases. Since the rights involved are so tremendous we protestants cannot permit the decision to become final, as we have pointed out from the beginning, unless and until we have exhausted every available remedy. We, therefore, earnestly beseech the Commission to grant us oral argument because this case, we think, will mark a milestone in the interpretation of the statute.

Furthermore, since this application is for some seven route stretching more than the entire length of our state, it represents a tremendous grab for authority and business. Mere size of request seems to be one of the applicant's chief grounds for the authority. We can only properly demonstrate what this invasion of an already overserved field really means through an oral argument.

The fact that the Examiner in our case has adopted the decision in the Kansas City Southern case as governing has made it necessary for us to analyze that case rather thoroughly. He has not only adopted the conclusions but also the reasoning. This necessarily follows because even if he had not said that similar contentions were made in the Kansas City Southern case, it would be true because he could not very well adopt the conclusions without the reasoning. We therefore apply that reasoning to the facts in our present case to demonstrate the total inapplicability of both

the reasoning and the conclusions.

In the Kansas City Southern case the Commission first decided that it was a new service. While as we point out elsewhere this is not true, in our case it distinctly is not the fact. Since we are rendering precisely the same service for another railroad and in the same area it follows that any statement concerning newness of the service has now lost its force. The statement about the act to the effect that Congress contemplated co-ordination can, of course, mean nothing here except that the railroad could accomplish that purpose if it would follow the example set by the Pere Marquette Railroad. The statement about the railroad's argument that they could get out of the less truck load business some other way has no applicability anywhere and is not of course in our case because there is no mention of this in the testimony presented

by the rails. The railroad contention in the Kansas City Southern case which the Commission adopted to the effect that there could be no bona fide co-operation between the railroad and independent carriers is likewise inapplicable here because the railroad not only has made no effort to co-operate but does not even have the slightest information concerning the service. It can hardly be said therefore that the railroad could have presented any proof on that subject. At any rate they did not do so. The Commission's argument about its inability to compel the railroad to join with the motor carriers in joint rates and through service does not as we point out elsewhere have any bearing on the issue. The fact . that the railroad will not do so is the only important element to be That certainly does not furnish an excuse for the grant of a new certificate. There are many things the Commission cannot compel. For instance, it cannot compel two carriers to divide revenue on any particular basis. In spite of that inability however it continually refuses extension of routes to common motor carriers on the ground that they could interline or interchange with other carriers and thus furnish satisfactory service. The statement by the Commission that the protestants had not suggested a plan for co-ordination in the Kansas City Southern case certainly cannot hold true here. We pointed out that we were performing the same service for another railroad in precisely the same way and that we could do so for the Rennsylvania. We not only pointed that out but also produced uncontroverted testimony that there was absolutely no difference in the kind of service the railroad testified they wanted and that which we are presently furnishing. The Commission's statement in the other case to the effect that the carriers serve other points and would have difficulty in adjusting their schedules is certainly not warranted by anything in the present record. We testified without contradiction that we could and would furnish the precise schedules that they wanted. In passing it may be worthy of note, however, that we demonstrated that the schedules the railroad proposes will not only not save time but will not meet the needs of the shipping public. It is uncontradicted that the motor carriers have a full and complete knowledge of the shipping needs of the public at these small towns. On that basis it was demonstrated that the rail proposal would find itself without use for all practical purposes because the shipper would not ship or receive at the precise time the schedule proposed. As a result it will be discovered that the railroad finally was forced to admit that these schedules were not definite and would probably be changed. As the record stands, therefore there is no certainty about what kind of service the railroad really would furnish. At any rate it cannot be said that the motor carriers seeking to furnish this service would have any

difficulty in adjusting schedules to meet the railroad's needs. They andicated a willingness to put on new schedules if that was

required.

The things we have just discussed constitutes the entire list of reasons which the Commission seems to advance in support of its conclusion that the service must be rendered by the company owned carrier. Not a one of them apply to our case in any way. When the Commission said that they were persuaded that volume tary co-operation was not practicable in the Kansas City Southern case, they were really not referring to anything in the record of substance that would justify such a conclusion. But in our case . we can say with positiveness that there is not a single fact that: would justify a statement along any of the lines advanced in that Voluntary co-operation would be practicable in our case if the railroad would consent to use our service. The Commission certainly would not be warranted in saying that since the railroad will not do so, such co-operation is not possible and that therefore the certificate should be granted. To make such a statement would be to confirm everything that we have been protesting against in this case. It would amount to saying that the railroad can prove public convenience and necessity by saying that it will not do busness with anyone else.

We believe that we are justified in saying that not a single bit of the reasoning, whether fallacious or not, set out in the Kansas City Southern case can possibly apply to the facts in our case. The Examiner, however, has predicated his decision entirely upon the reasoning and conclusions in that other proceeding. This we submit, not only does violence to the fact of record but does

violence to all reason and logic.

The fact that the railroad is the real party in interest in our case just as it was in the Kansas City Southern case should make the Commission look with grave doubt and suspicion on any claim made by the railroad to the effect that it could not use independent motor carrier service. If the railroad is the applicant, then obviously, if it is to get the new cereificate, it cannot admit that it would use the service available. If a motor carrier should advance such strange reasoning in support of one of its applications it would be laughed out of court. Surely the fact that the railroad has created a subsidiary corporation and not applied for the certificate directly is not to be considered as changing the essential nature of the argument. Neither should the Commission recognize such argument as a substitute for proof needed to show that the public cannot be adequately served by existing carriers. After all. it is public convenience and necessity the applicant must prove not merely convenience or even necessity on the part of its parent the railroad. We submit that in the Kansas City Southern and other cases down to and including our own the only thing that has been shown has been convenience to the railroad plus a deliberate refusal to have anything to do with carriers already in the field.

We respectfully pray that the Commission make a specific finding that the protesting motor carriers do have sufficient and adequate service and facilities and can satisfactorily perform the service proposed in the application. We request that the Commission make a finding that the applicant has not made any showing that existing carriers cannot satisfactorily perform the service. That the public convenience and necessity does not require the grant of this new sertificate. That the proposed duplication of service is contrary to the provisions of the statute and would be against public policy. We ask the Commission to specifically make affirmative findings on the various issues raised by these exceptions and our brief, and that such findings on each separate point agree with the contentions we have made in those documents.

The many errors by way of admitting or rejecting evidence can only be cured by a new hearing if this finding is not reversed. However, we think that oral argument should be had before any final determination is made by the Division because of the many other errors we have pointed out. We feel that the protesting carriers have not been given a full and fair trial of the cause on its merits. We say this because the Examiner has apparently determined the case on one ground alone. That ground is that the Kansas City Southern and other cases have determined in advance that whenever a railroad seeks a right it must be granted even though the record clearly shows that the carriers already in the field can and will furnish the service. The Examiner has said so in almost as many words. This is bad law and it obviously should not be allowed to stand. Any rewriting of the order without giving us an opportunity to be heard, if it reaches the same conclusion, cannot cure those errors. We must insist to the end that protestants be given an opportunity to have its case fully considered. This can only be done by permitting us to introduce the proof we were prevented from putting into the. record and by having excluded therefroin the evidence to which We respectfully; submit that we are entitled to an opportunity to be heard by the Commission and urge that this be set down at a reasonably early date.

Respectfully submitted.

INTER-STATE MOTOR FREIGHT, SySTEM, PARKER MOTOR FREIGHT, By K. F. CLARDY, Attorney.

Dated at Lansing, Michigan, October 29th, 1942.

(Note: The below inadvertently omitted from printed copy.)

The protestant, Inter-State Motor Freight System, has spent many hundreds of thousands of dollars in starting, promoting, and conducting its operations. Its main office is at Grand Rapids, Mich. igan. This is the heart of its system and it also one of the principal points the applicant proposes to serve. The proposed order, if permitted to stand, will, therefore, destroy much of the value of this protestant's investment at one stroke. If an investment representing years of work and thousands of dollars is to be destroyed on the strength of the sort of evidence presented in this case, then the public interest is certainly being served in a strange fashion. Since applicant's proposal strikes at the very heart of this protestant's system, it will undoubtedly result eventually in badly crippling protestant's ability to serve many of the points the railroad praently does not propose to serve. The granting of this certificate therefore, is in effect a gift worth untold thousands at the expense of one of the pioneers in the motor-carrier industry.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding by mailing a copy thereof, properly addressed, to each such party.

Dated at Lansing, Michigan, this 29th day of October A. D. 1942

K. F. CLARDY.

1150 BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. MC-2815 (Sub. No. 6)

IN THE MATTER OF THE APPLICATION OF THE WILLETT COMPANY OF INDIANA, INC., FOR AUTHORITY TO EXTEND AN OPERATION AS A COMMON CARRIER OF COMMODITIES GENERALLY IN INTERSTALL COMMERCE

Exceptions and brief in support thereof on behalf of Days Transfer, Inc., O. I. M. Transit Corporation, and Wolverine Express.

Inc., to the report and recommended order of Examiner Walter W. Bryan

Oct., 31, 1942

I. Exceptions to Report and Recommended Order

Come now Days Transfer, Inc., O. I. M. Transit Corporation and Wolverine Express, Inc., by counsel, and hereby except to the following quoted finding of the examiner:

"The Examiner finds that present and future public convenience and necessity require operation by applicant as a common carrier by motor vehicle, in interstate or foreign commerce of general commodities, between the points, and over the routes shown in the appendix attached hereto and made a part hereof, * * *."

The finding quoted in part, above, is found on sheets four

and five of the report and recommended order. The remainder of the finding, which is not quoted above, contains certain restrictions, including restriction number three which provides that "no shipments shall be transported by applicant as a common carrier by motor vehicle between any of the following points or through or to or from more than one of said points: Fort Wayne, Indiana, and Grand Rapids, Michigan."

To this finding protestants except upon the following grounds.

1. That said finding is not supported by the evidence in said cause.

2. That said finding is contrary to the evidence in said cause.

3. That said finding, as is apparent from the examiner's review of the case, in said report and recommended order, is based, in part, upon only that evidence of applicant and intervenor which is most favorable to applicant, and the rest upon fiction only.

4. That the examiner's report shows that his finding is arrived at without consideration being given to protestants evidence; adduced from applicant's and intervenor's witnesses upon cross examination and from protestants own witnesses upon direct examination.

amination.

Wherefore, protestants respectfully pray the Interstate Commerce Commission to sustain these exceptions and that the Interstate Commerce Commission find as follows:

That public convenience and necessity do not require the proposed operations and that the application should be denied in its

entirety, or

That public convenience and necessity require the proposed operation but that operations conducted thereunder shall be limited to the transportation of freight having a prior or subsequent movement by rail.

Respectfully submitted,

CLAUDE H. ANDERSON; and WARREN C. MOBERLY, Attorneys for Protestants.

II. Brief in Support of Said Exceptions

A. Argument.

Protestants desire to point out that the examiner making the report and recommended order in this cause, Walter W. Byran,

participated in the conduct of the hearing only on June 1 1153 and June 2, 1942, at Lansing, Michigan. This examiner did not participate in the conduct of the hearing held on Feb. ruary 10 and February 11, 1942, at Indianapolis, Indiana. In fairness to the examiner, the above facts are set forth here since these facts may be the cause of the erroneous report and recommended order entered by said examiner. Further, as stated in said report on sheet two, this case was referred to Joint Board No. 23, composed of members representing the states of Indiana and Michigan, and was heard by said Joint Board with Examiner Reece Harrison participating at Indianapolis, Indiana, and Examiner Bryan participating at Lansing, Michigan. Upon the failure of the Joint Board to agree upon a recommendation to the Interstate Commerce Commission for the disposal of this application, same was referred to the examiner for an "appropriate" recommendation. The recommendation was made by the examiner in his report and recommended order served Sep. tember 14, 1942. The appropriateness of this recommendation is discussed hereafter in this brief.

To bring out the fallacy of the examiner's finding, counsel will discuss the examiner's references to the evidence, and the facts established by the evidence. In paragraph four, sheet two, of

his report, the examiner makes this statement:

"The above mentioned traffic will be transported by rail be tween key or break-bulk stations and thence by truck to the intermediate or way stations. Conversely, applicant would collect freight at the way stations and transport it to the key stations for movement beyond by rail."

The examiner evidently has misunderstood the operations 1154 proposed by applicant. By all of the testimony presented

by applicant's witnesses and the witnesses of intervener supporting applicant, it is clearly stated that applicant proposes to transport freight from intermediate or way stations through either one of the break-bulk stations or key points to final destination at other so-called way stations, in interstate commerce, as well as to transport said freight from one way station to a breakbulk station, or key point, for transfer to rail cars for further That is, applicant does not intend to pick up freight delivery. at points north of Grand Rapids, Michigan, a break-bulk station or key point, and always turn same over to the railroad at Grand Rapids, but applicant in many cases does intend to transport said freight through Grand Rapids and deliver such freight to points in Indiana north of Fort Wayne. This situation also applies to the transportation of freight from points in Indiana north of Fort Wayne through Grand Rapids for delivery at points north of Grand Rapids. This is the first example occurring in the examiner's report showing his misconception of the evidence and the issues in this case.

In paragraph two, sheet three, of the report the examiner

states as follows:

"The railroad will continue its rail service to all of these points (referring to the intermediate or way points covered by the application) in transporting carload freight but will discontinue the operation of the 'peddlar cars' on the local freight trains."

A similar statement was made by witness E. M. Christie, agent on special duty, Pennsylvania Railroad, in his direct examination

by applicant's counsel. However, in the cross-examination

1155 of Mr. Christie, by counsel for protestants, he admitted that the "peddlar cars" would be continued in operation over the rail route paralleling the route covered by this application for service to and from the intermediate or way stations. This witness admitted, in that cross-examination, that these "peddlar cars" would still be utilized for an undetermined amount of freight, less-than-carload freight, moving from and to the intermediate or way points. These conflicting statements were pointed out by us in our brief filed in this case prior to the serving of the report and recommended order, and within the time allowed by the Joint Board and subsequent extensions of time by the Interstate Commerce Commission. Obviously, the examiner has referred only to that testimony which is most beneficial to applicant, and intervenor, and has wholly ignored the statement by intervenor's witness, on behalf of applicant, in his cross-examination by counsel for protestants.

The second sentence of said paragraph two, sheet three, is

quoted as follows:.

By eliminating the 'peddlar cars' it will enable the railroad to release a number of rail cars to be used in through-train service; will also enable the railroad to reduce its transit time to the various way stations from twenty-four to forty-eight hours; will eliminate over 61,000 car miles per mouth; will increase the efficiency of the railroad by eliminating the expense of substituting the 'peddlar cars' to and from the freight platform; and will result in heavier loading of cars by the consolidation of less-than-carload shipments into one car for each key point."

From the testimony as it appears in the transcript of this cause, the examiner is unwarranted in assuming, or inferring, that the

"peddlar cars" will be eliminated. The testimony of wit 56 ness E. M. Christie, on cross-examination, states clearly and unequivocally that the "peddlar cars" will be con-

tinued in operation over the route involved. Consequently, those

cars cannot be, and will not be, released for service elsewhere Also, on cross-examination of intervenor's witness and applicant's witness, E. M. Christie and J. P. McCardle, the statements made by those witnesses on their direct examination relative to reduction of time in transit was disproved. Both of those witnesses stated that unless freight was tendered applicant for transports. tion at very early morning hours such freight would be delayed twenty-four hours before starting in transit under the operating schedules proposed by applicant and introduced as exhibits in That is, unless south-bound freight originating at points north of Grand Rapids was tendered to applicant prior to 10:00 o'clock in the morning, the scheduled departure time for an plicant's trucks, that freight would have to remain on the railroad's docks until the next morning, thereby causing a twentyfour-hour de av in the start of that freight in transit. situation prevails, under said operating schedules, for freight originating in Indiana north of Fort Wayne destried to points in Michigan. Protestants carrier witnesses, long experienced in transporting freight and serving shippers in this territory. stated that the shipping public in the points involved could not. and would not, have freight ready for shipment until mid afternoon each day. That such shipping hours were customary and integrated with business conditions in the points involved./ Here again, the examiner has not dealt with all of the evidence in the cause but has merely picked out a small portion of it which is most favorable to applicant. He has not even considered all of the evidence given by applicant's own witnesses.

Under all the rules of practice and procedure, an applicant is bound by the statements of his own witnesses. whether those statements are made on direct examination or crossexamination. The saving of car miles, and the increased efficiency of railroad operations, referred to by the examiner in the sentence quoted above, are conclusions likewise based upon the consideration only of testimony most favorable to applicant, ignoring the rest of the testimony given by applicant's own witnesses and protsants witnesses. Such savings and increased efficiency of operations are not established by the evidence. Applicant's and intervenor's witnesses stated in their direct examination, that sud? styings and increased efficiency will result from the proposed opertions, but, in their cross-examination these same witnesses admitted that the savings and increased efficiency will not result. Where witnesses so clearly contradict, themselves, their testimony must, be ignored; not even that which is favorable to applicant can fairly be used. No man can determine which statement is the truth and which is an untruth. The last portion of the sentence

quoted above evidently came from the examiner's imagination and not from anything in this second. There is no testimony to the effect that a heavier loading of cars between the key points will result from the institution of the operations proposed. Intervenor's witnesses stated that the railroad will continue to use consolidated cars of less-than-carload shipments between the key points, Fort Wayne, Indiana, and Grand Rapids, Michigan, and there can be no increase in this carloading, because, under the existing method of operation the railroad brings in less than-carload freight from the way stations to the key points and there

consolidates that freight for movement out of one key point 1158 to the other. If any change in this situation results from

the institution of the proposed operations, that change will be a decrease in the carloading of this less-than-carload freight because some of that freight which is now handled from one key point to the other, and then peddled back to some way station will be handled direct from point of origin to destination by motor vehicle equipment, thereby reducing such consolidated movements between key points and wearing out vital motor vehicle equipment in the process. This condition is clearly established by the evidence given by E. M. Christie, witness for intervenor, in absolute contradiction of the statement made by the examiner, referred to above.

The last sentence of paragraph two, sheet three, relating to the effect the institution of the proposed operations might have upon employees of the railroad, is a most interesting statement. If we disregard the statements made by intervenor's witness on cross-examination and accept at full value the statements that witness made on direct examination relative to the alleged savings of cars, car miles, and operating time, there can be only one effect upon the railroad employees and that effect is a reduction in hours of employment and the resultant reduction in wages earned. In fact, Mr. Christic stated that such a reduction in working hours would result. If the working hours of such employees are reduced their pay cheeks will be reduced pro rata. There can be no other result. If, however, we are to accept as facts the statements made by Mr. Christic on cross-examination relative to the continued operations of "peddlar cars" the sentence referred to above will

be correct; that is, there will be no reduction in working hours, and likewise, no reduction in the size of the pay checks received by the railroad employees.

The second sentence on sheet four of the examiner's report is as follows:

as Ionows

"The present rail service on less-than-carload shipments is slow and the witnesses (applicant's shipper witnesses) state that if the service proposed herein would expedite the movement of these less-than-carload shipments to their places of business, then such service would be a decided convenience and necessity to them."

Protestants challenge the examiner, and anyone else, to find one statement in the transcript where a shipper witness for applicant stated that the proposed expedition of service was a necessity to him. Such a statement does not appear in the record at arry place. The most that any shipper witness for applicant stated was that such an expedition would be a convenience. Everyone of the witnesses who testified, and the stipulations of those who did not testify in person, showed that all of said shippers and receivers had available to them all of the transportation services. which they needed .: There was absolutely no showing whatsoever that any new or changed service was needed by any shipper or receiver of freight. There certainly is a distinct difference be tween the meanings of "convenience" and "necessity". The Commission repeatedly has held that mere convenience to a shipper is not sufficient upon which to base a grant of new or extended authority to any motor carrier. The Commission has always held that proof of necessity must be advanced to warrant such a grant of authority. Protestants submit that there has been absolutely no proof of any necessity, to shippers or receivers of freight, for the proposed service.

1160 From lines 12, 13, 14, 15, and 16 of the first paragraph on

sheet four, the following quotation is taken:

** * and they (referring to protestants carriers) take the pesition that the existing motor carriers in the considered territory should be afforded opportunity to improve their present services and facilities before authorization for new service is granted."

This statement infers that the motor carrier protestants are not rendering an adequate service to the shipping and receiving public in the points involved in this application. Such a statement, and the obvious inference, is most unwarranted and a figment of imagination. There is not one word in the transcript of this cause which justifies such a statement and the obvious inference. To the contrary, each witness appearing for protestant motor carriers, without exception, stated that the carrier which he represented made available to the shipping and receiving public more service than was needed by the shippers and receivers in the points involved. The testimony showed that everyone of the motor carriers protesting this case had available motor vehicle equipment which was not being used because of the low volume of freight moving in the territory involved. Further, each wilhess of said protesting motor carriers stated that the motor vehicle equipment that was being used by his company was not, filled to capacity. Further, the shipper witnesses appearing both for applicant and protestants stated that the motor carriers serving the territory rendered much more expeditious service than that rendered by the railroads and that the service rendered by such motor carriers was faster than the proposed service

61 even if the twenty-four-to forty-eight-hour expedition of

deliveries was achieved as applicant's witnesses testified would result from the institution of the proposed services. Protestant carrier witnesses did state that their respective companies were willing to secure additional equipment if same became necessary to handle traffic moving in the territory involved. Also, each of those witnesses stated that their respective companies were willing to enter into arrangements with intervenor whereby their companies, protestants herein, would perform the same service for intervenor as applicant herein is proposing to do. Here again, the examiner has gone beyond the record or has not even considered the record in preparing his report and recommended order.

For the reasons set forth herein, it is apparent that the finding of this examiner is not based upon the evidence; in fact, much of the examiner's reasoning cannot even be substantiated by considering only that evidence which is most favorable to applicant. The reasoning upon which the examiner has based his finding, as shown above, is clearly contrary to the evidence. If applications of this nature are to be determined by consideration of only that portion of the evidence which is favorable to applicant and by ignoring the evidence adduced from protestant's witnesses and from . applicant's witnesses upon cross-examination, the very intent of the Interstate Commerce Act, as amended, is defeated. The Interstate Commerce Act was drafted and approved, and is being administered for the purpose of promoting sound and economic transportation services for the shipping and receiving public and for the further purpose of protecting existing carriers from unwarranted and "cut-throat" competition. By basing a grant

cant and ignoring the evidence of protestants, the Interstate Commerce Commission would be issuing authority to every applicant who plays for same. This would "open the gate" for literally thousands of carriers to rush into operations, under Interstate Commerce Commission authority, over routes, and between points, new adequately, and more than adequately, served by existing carriers. This would bankrupt all carriers, make their services wholly irresponsible and cheat the shipping and receiving public out of the responsible and economic transportation services which the Interstate Commerce Act, through the Interstate Commerce Commission, has fostered.

If applicant is to be permitted to institute the operations proposed in this application, and recommended by Examiner B. yaz, this case will be a precedent for the very result described above. A new competing service will be established without any proof of public convenience and necessity. A new grant of authority will be issued in defiance of the evidence produced at the hearing. A service will be instituted under the guise of being auxiliary to, or supplementary to, an existing rail service, when, in fact, the newly instituted service will be a new motor truck operation competing with existing motor carriers and not supplementing or augmenting any existing rail service.

If the service proposed herein is desired by applicant and intervenor to be purely supplementary to, or auxiliary to, the existing rail service, the authority might be granted with

the "prior or subsequent movement by rail" restriction without too seriously affecting the interests of common carriers by motor vehicle serving the territory involved. Such a restriction would insure the new operation as being, in truth and in fact, supplementary to, or auxiliary to, existing rail service and would not be objectionable to protestants represented by us. However, any grant of authority as prayed for in this application, with only the key point restriction, and as recommended by the examiner, is totally obnoxious to said protestants and seriously endangers their very existence as efficient economic motor carriers and must, and will be, opposed as strenuously as possible.

B. Conclusion.

Wherefore, protestants respectifully pray the Interstate Commerce Commission to sustain these exceptions and that the Interstate Commerce Commission find as follows:

That public convenience and necessity do not require the proposed operations and that the application should be denied in its entirety, or

That public convenience and necessity require the proposed operation but that operations conducted thereunder should be limited to the transportation of freight having a prior or subsequent movement by rail.

1164 Respectfully submitted.

CLAUDE H. ANDERSON, and WARREN C. MOBERLY, Attorneys for Protestants.

III. Certificate of Service

I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding by mailing a copy thereof, properly addressed, to each party.

Dated at Indianapolis, Indiana, this 31st day of October 1942.

CLAUDE H. ANDERSON,

1166 BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. MC-2815, Sub No. 6

IN THE MATTER OF THE APPLICATION OF THE WILLETT COMPANY OF INDIANA, INC., EXTENSION

Exceptions to report and order recommended by Walter W. Bryan, Examiner, and brief in support thereof

Nov. 2, 1942

Come now Norwalk Truck Line Company and Norwalk Truck Line Company of Indiana, Inc., protestants herein, and respectfully except to the Report and Recommended Order of the Examiner herein, as served on the 14th day of September 1942, upon the following grounds:

1. The finding that public convenience and necessity require the proposed operation by applicant as a common carrier by motor vehicle, in interstate or foreign commerce, of general commodities over routes specified in the application is not supported by the evidence, and is contrary to the evidence.

2. The grant of authority to applicant, as recommended, would

be against the weight of the evidence.

3. The grant of authority to applicant, as recommended, would not be in the public interest.

1167 BRIEF IN SUPPORT OF EXCEPTIONS

In view of the discussion of the record and the arguments relative thereto as contained in the several briefs filed herein by protestants following the hearings, counsel will not engage in an extended discussion of the exceptions herewith urged as grounds for rejection of the Examiner's Report and Recommended Order.

Insofar as shippers and receivers of freight are concerned (and these are the ones, we insist, who constitute the "public" to be

considered in this matter) the basis of a finding of public convenience and necessity as to them is summed up in paragraph one, sheet 4, of the Examiner's Report wherein it is stated with reference to the testimony of applicant's "shipper" witnesses that—

"In substance, their testimony is that they are now using the rail service in both carload and less-than-carload shipments. The present rail service on less-than-carload shipments is slow and the witnesses state that if the service proposed herein would expedite the movement of these less-than-carload shipments to their places of business, then such service would be a decided convenience and necessity to them."

• The evidence shows that daily service by motor vehicle is now available to every city, town, and hamlet along the proposed route and no evidence of moment was produced to negative the conclusion that such service is ample to supply every reasonable need therefor. To hold, in the face of such proof, that public necessity

now demands another trucking service along this route, whether it be "Auxiliary or supplemental" to Pennsylvania Railway Service, or otherwise, is to introduce into the dic-

tionary of legal terms a distinctly new and novel definition of the term "public necessity."

A considerable portion of the Examiner's report is devoted to a discussion of the condition attached to previous certificates issued to the applicant, viz: that—

"Shipments transported by applicant shall be limited to these which it receives from or delivers to the railroad under a through bill of lading covering in addition to movement by applicant, a

prior or subsequent movement by rail."

The conclusion is that this restriction should not be imposed in the instant case and that, instead, the action of the Commission in Kansas City Southern Transport Company, Inc., 28 M. C. C. 5. should be followed. With this conclusion these profestants, for the reasons urged in the original briefs filed herein, emphatically Shipments subject to the quoted condition would necessarily cross the Indiana-Michigan State line and the evidence is indisputable that ample transportation facilities by motortruck now exist for the accommodation of any and all traffic which may move in interstate commerce between any points on the routes proposed to be served by applicant. Under present conditions it is particularly absurd to anticipate that any shipper on any of these routes would, or could legally, demand that the Pennsylvania Railroad operate local freight trains for the transportation of such freight as might be offered to it for carriage between two points where such carriage did not involve a prior or subsequent movement by rail. .

In conclusion we again assert that "the public interest may best be served by a denial of the application" in its entirety and we therefore urge that the Report and Recommended Order as submitted by the Examiner under date of September 14, 1942, be rejected and that in lieu thereof an order of denial of the application be entered.

Respectfully submitted.

NORWALK TRUCK LINE COMPANY,

NORWALK TRUCK LINE COMPANY OF INDIANA, INC.,

Protestants,

By FRED I. KING, Attorney for Protestants.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing briefupon all parties of record in this proceeding, by mailing a copy thereof, properly addressed, to each party.

Dated at Indianapolis, Indiana, this 30th day of October 1942.

Attorney for Protestants, Norwalk Truck Line Company and Norwalk Truck Line Company of Ind., Inc.

1176 BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. MC-2815-Sub. No. 6 (Form BMC-74)

IN THE MATTER OF THE APPLICATION OF THE WILLEPT COMPANY OF INDIANA, INC., FOR A CERTIFICATE OF CONVENIENCE AND NECESSITY AS A COMMON CARRIER OF COMMODITIES GENERALLY BY MOTOR VEHICLE IN INTERSTATE COMMERCE.

Applicant's reply to exceptions of Protestant's Interstate Motor Freight System, Parker Motor Freight, Days Transfer, Inc., O. I. M. Transit Corporation, Wolverine Express, Inc., Norwalk Truck Line Company, Norwalk Truck Line Company of Indiana, Inc.

Dec. 18, 1942

1

EXCEPTIONS FILED ...

To the reply and recommended order of the Examiner herein three different sets of Exceptions were filed, as follows:

1. On October 29. 1942, Exceptions were filed on behalf of Inter-State Motor Freight System and Parker Motor Freight.

2. Exceptions were filed on October 30, 1942, on behalf of Norwalk Truck Line Company and Norwalk Truck Line Company of Indiana, Ivc.

3. On October 31, 1942, Exceptions were filed on behalf of Days Transfer, Inc. O. I. M. Transit Corporation and Wolverine Ex-

press, Inc.

The applicant will reply to each of these Exceptions in the order named.

II

REPLY TO EXCEPTIONS OF INTER-STATE MOTOR FREIGHT SYSTEM AND
PARKER MOTOR FREIGHT

IIA. Extracts-Testimony of Applicant's Witnesses.

In order to answer some of the contentions of protestants regarding the evidence, we think it advisable to set forth a few brief summaries or extracts from part of the pertinent testimony of not only applicant's shipper witnesses, but also the protestants' shipper witnesses. In the light of this testimony it will be seen that there is no foundation for the claimed exceptions of the protestants.

First, we set forth some of these extracts regarding applicant's

shipper witnesses.

Claude H. Caton

We set forth the following from the testimony of applicant's witness Claude H. Caton, located at LaGrange, Indiana:

DIRECT EXAMINATION

If this particular rail-truck service is instituted and it will expedite the movement of our Pennsylvania Railroad freight 24 hours, it will be of benefit in our business (Tr. 312); and it will serve the convenience and necessity of our particular business; it will help us (Tr. 312).

If this service is instituted for The Pennsylvania Railroad by The Willett Company, our company will continue to use The Pennsylvania Railroad and avail itself of the rail-truck service (Tr. 312).

We would like to have that service (Tr. 312-313).

CROSS-EXAMINATION

The truck service we receive from Chicago is slow—slower than rail (Tr. 322); it takes 3 days by rail and several by truck (Tr. 322); by truck it was several days, although I wouldn't be

capable of giving you the exact time because I know we were very anxious for the goods and in some way or other, they got mixed up in the transfer and they did not come by way of a direct line, but they came into South Bend and they were transferred to one of the other lines, or else they just laid over there, or something, and we had to follow the shipment up (Tr. 322); it was considerably over three days by truck (Tr. 322). I think Matthas and Mills render about a three-day service from Chicago, operating out,

of South Bend (Tr. 323).

I get O. I. M. shipments from Detroit. Also some other carrier brings a shipment from Detroit and sometimes they change them. they ship them to South Bend from Detroit and then they double back, or something like that (Tr. 324). I have suggested to the shipper that he route his shipment by some line that comes directly but they insist on using Mills and this other carrier (Tr. 324-325). It takes O. I. M. two days from Detroit; O. I. M. takes the shipment to Fort Wayne and then doubles back, out of Fort Wayne to LaGrange: they do not pass through LaGrange except in one direction. I am quite positive of it (Tr. 325-326).

Regarding the effect on the damage claim. I will make this statement, that when your shipments are handled directly by the railroad all the way through, and you have to have a damage claim, you will be much more apt to get a quicker return from handling your damage claim with one claim Department than you will be if you have to go through two or three trucking companies with it

(Tr. 331-333).

M. L. Button

We set forth the following from the testimony of applicant's witness/M. L. Button, located at Allegan, Michigan, and connected with Angle-Stool Company at Plainwell. Michigan:

DIRECT EXAMINATION

If this particular service is instituted and if they thereby give us an expedited service of 24 hours through this rail-truck service of The Pennsylvania Railroad and The Willett Company, that will serve the convenience and necessity of our company. (Tr. 351-352).

We are confronted with the fact that we have competition; we are located in Michigan and our competition is located in the East and around through Illinois; and 24 hours, of course, will make a day and nowadays, people want things when they want them: they do not want to wait and if you can get, our shipments in 240 hours quicker, why that is going to help our business. The company is going to demand that I get them in there the quickest way

I can and the customers are going to demand that I get them out the quickest way I can; and we would like to have this expedited service (Tr. 354).

CROSS-EXAMINATION

We are not using the service of common motor carriers on longer hauls unless we can help it; only when it is routed that way (Tr. 358). We are using on inbound shipments a number of carriers but they are selected by the shippers; we used to use Wolverine Express to bring us paint from Chicago, but we were unable to depend upon them so it is brought in by Associated Truck Lines now (Tr. 359).

There is no motor carrier serving us in either direction from Cleveland except once in awhile when the customer demands it;

we prefer to ship by rail if we can get it that way.

With respect to time, The Pennsylvania Railroad's rail servicewe get it in two days; by trucks, we have never had it in less than four days because it is held up in Toledo (Tr. 361); I could not say what truck line holds it up because when we make a complaint or send a tracer through on something, they will say, "Well, it was held up there." They have half a dozen different lines picking up at the terminal in Toledo (Tr. 361).

My understanding of this proposed service is The Pennsylvania Railroad will pull the freight on the railroad as far as it can and then when it gets to a place where it is slowed up like between Kalamazoo and Grand Rapids, where our local train runs one day north and the next day south, this truck will speed up that service because we will get one truck north and one truck south every day rather than every other day (Tr. 364).

As far as our interest is concerned in this proposed service is that

we need a 24 hour speeding up of the service (Tr. 367).

In other words, we do not care whether they actually get it in there late, so that it could not catch the train, to make the connection, or not, but if they will speed up the service, as far as the movement of any particular shipment is concerned that is what we request (T. 368).

We are interested in seeing the railroads speed up this service (Tr. 368). Even if the supposed truck out of Kalamazoo had anything to do before it got to our city, even if it made the 4:00 o clock schedule, it would not pass us on that day because the truck would drop the freight at the railroad station and we would pick it up at the railroad station the next morning (Tr. 370).

The Pennsylvania Railroad told us they would speed up our shipments reaching Plainwell by 24 hours and that is all we are

asking (Tr. 391).

Edward F, Zinkel

We set forth the following from the testimony of applicant's witness Edward F. Zinkel, located at Conklin, Michigan:

DIRECT EXAMINATION

It has been explained to me that The Pennsylvania Railroad, through The Willett Company proposes putting on a truck between Grand Rapids, Michigan, and that it will expedite the movement of our in-bound and out-bound shipments at least 24 hours. If this service is rendered, it will serve the convenience and necessity of our business and we would like to have it instituted (Tr. 399-400).

CROSS-EXAMINATION

I own a truck, hold a contract, and my men do the pick-up and delivery for The Pennsylvania Railroad in Conklin and for other railroads; the Grand Trunk runs through Conklin; no promise has been made nor representations as to whether or not they will continue with my contract (Tr. 404); I operate one piece of equipment (Tr. 405).

The present service I am receiving from The Pennsylvania

Railroad is not satisfactory, it is too slow (Tr. 405).

Bishop Truck Lines is the only truck line that operates through our town (Tr. 405); it is off the state highway, north about seven miles and the closest town is Coopersville; it's about 6 or 7 miles (Tr. 406). I have been doing this pick-up and delivery service for the railroads for four years but I will gladly turn it over to anybody else.

George M. McDowell

We set forth the following from the testimony of applicant's witness George M. McDowell, located at Reed City, Michigan:

DIRECT EXAMINATION

If this service is instituted as explained to me as I have indicated, it will serve the convenience and necessity of my business and I would like to have this truck service instituted and if it is instituted will continue to use the service of The Pennsylvania Railroad (Tr. 417-418).

II-B. Stipulation Regarding Applicant's Thirty-eight Shipper Witnesses-

Each and every one of the thirty-eight stipulations contains the following six exact paragraphs and stipulations:

1. That he is acquainted with the inbound and outbound ship-

ments which his company ships.

- 3. That the said outboard and inbound shipments which his company ships and receives over The Pennsylvania Railroad to and from the city in which his business is located, are as follows: (In each instance, there was named the approximate number of shipments, the weight of each, and the origin or destination points as the case might be; in total, amounting to millions of pounds of freight, constituting commodities generally) in interstate commerce.
- 4. The witness has had explained to him the service to be rendered in the rail truck service by The Willett Company of Indiana, Inc., for The Pennsylvania Railroad Company over this route, serving his business.

5. He has also had explained to him that this rail-truck service serving his business; if instituted, will expedite the movement of the shipments to and from his business by The Pennsylvania Rail-

road Company 24 hours or more.

6. If such service is authorized by the Interstate Commerce Commission, it will serve the convenience and necessity of his business and his business will continue to use The Pennsylvania Railroad service in conjunction with the rail-truck service described in the application.

II-C. Stipulated Cross-Examination of Each of the Thirty-eight Witnesses

As hereinbefore shown the cross-examination of each of these witnesses shall be considered the same in substance as the cross-examination of the four shipper witnesses of applicant testifying in person.

We analyze this cross-examination applicable to each of these thirty-eight witnesses summarized as follows:

We don't use many of the truck lines (Tr. 317):

Present service of The Pennsylvania Railroad and the various truck lines that are serving us are adequate unless they could

improve on the service in some way or other, of course (Tr. 318-

319).

The truck service we receive is, in some instances, slower than rail; it takes one day less by rail, in some instances (Tr. 322-323). In some of these instances we have suggested to the shipper to change the truck routing; some of the truck lines serve in one direction only (Tr. 324-326).

The only complaint against The Pennsylvania Railroad from certain points is that of damage; it is no fault of The Pennsylvania Railroad (Tr. 315-328). Some of the truck lines serving us are good and we have no complaint to make against that service

(Tr. 316-317).

Regarding damage claims when shipments are handled directly by the railroads all the way through, and you have to have a damage claim, you will be much more apt to get a quicker return from handling your damage claim with one Claim Department than you will if you have to go through two or three trucking companies with it (Tr. 331-333).

Some of the truck lines serving our town have no regular sched-

ule (Tr. 355).

We are satisfied with our truck service by short haul (Tr. 357-358).

We are not using the service of common motor carriers on long hauls, except when it is routed that way (Tr. 358), but we prefer

to ship long haul by rail if we can get it that way.

As far as our interest is concerned in this proposed service, it is that we need a 24-hour speeding up of the service (Tr. 367). If they speed up the service to us as far as the movement of any particular shipment is concerned, that is what we request (Tr. 368). We are interested in seeing the railroads speed up this service (Tr. 368).

III. Extracts-Testimony of Protestants' Witnesses

We also set forth some of the pertinent extracts from the testi-

Leo Miller.

We set forth the following from protestants' witness Leo Miller, located at Sturgis, Michigan:

DIRECT EXAMINATION

The service of The Pennsylvania Railroad has not been good (Tr. 693). If one of these carriers does not have a truck in Sturgis, we pick up our own freight (Tr. 695).

CROSS-EXAMINATION

In any event, if The Pennsylvania Railroad were to have expedited that shipment which took seven days, as much as 24 hours in delivery, it would have helped out that much (Tr. 697) and we would have no objection if the shipment were expedited by The Pennsylvania Railroad (Tr. 698).

The witness then sparred over a number of questions and finally the following question was asked him, "I am just asking you now. Mr. Witness, with regard to the service of The Pennsylvania Railroad, not any truck line, and my question is, If The Pennsylvania Railroad can amprove this service to you by giving you a quicker delivery, that would be of advantage to you, would it not!" Answer, "Absolutely."

After sparring on a number of other questions which indicated that the witness had not understood what the proposed service was (Tr. 701-703) he stated that he would not have any objection to the improved service of the railroad, expediting his shipment from Berne 24 hours, and that it would not in any way affect his business except beneficially (Tr. 703).

E. O. Nyman

We set forth the following from protestants' witness E. O. Nyman located at Petoskey, Michigan:

CROSS-EXAMINATION

At the present time we are receiving quicker service by two days by truck than by rail from interstate points.

If The Pennsylvania Railroad service could be expedited 24 to 48 hours, that would be beneficial to his company to that extent (Tr. 718).

No one has explained to him what The Pennsylvania Railroad was trying to do in this instance, that it was trying to expedite by 24 to 48 hours the movement of its freight in its rail service (Tr. 718).

Counsel for applicant then endeavored to get the witness to answer direct questions regarding the expedition of the service and the benefit it would be to his business and the witness's answers were unsatisfactory in that there was a sparring and hedging with counsel, so much so that Joint Board Member Eggers was compelled to say to the witness:

"Just a moment, Mr. Yockey. It appears to me at least that these questions are all very simple and are susceptible of being

answered by 'yes' or 'no.' 1 do not see why we have to have a lot of hedging around here." (Tr. 720.)

F. J. Schmidt, Jr.

We set forth the following from protestants' witness F. J. Schmidt, Jr., located at Petoskey, Mich.:

CROSS-EXAMINATION

As to those points other than Chicago where we are shipping by The Pennsylvania Railroad in less-than-carload freight, if The Pennsylvania Railroad can, by instituting truck service part of the way, shorten the delivery time at destination, of those railroad shipments, that would be beneficial to our company (Tr. 736–737).

Naturally, it would benefit us if the railroads could expedite its service as indicated as far as inbound shipments are concerned also (Tr. 737-739).

Charles E. Garthe

We set forth the following from protestants witness Charles E. Garthe, located at Traverse City, Michigan:

CROSS-EXAMINATION

This witness squirmed and stalled also, and was admonished by Joint Board Member Barkell (Tr. 770-771) and finally said that if the railroads can speed its service up from 24 to 48 hours, that would be of value and benefit to his business (Tr. 771).

E. W. Smiley, Jr.

We set forth the following from protestants' witness E. W. Smiley, Jr.; located at Sturgis, Michigan:

CROSS-EXAMINATION.

He uses Pennsylvania Railroad in inbound and outbound shipments in less-than-carload quantities (Tr. 789); he uses trucks because he gets quicker service; the rail service would appeal to him if it were quicker than it is at the present time (Tr. 792); and if these shipments can be expedited one or two days, that would be of a benefit to our business and desirable (Tr. 793); and we have no objection to The Pennsylvania Railroad so expediting its service (Tr. 793).

E. M. Moore

We set forth the following from protestants' witness E. M. Moore, located at Sturgis, Michigan:

CROSS-EXAMINATION

Occasionally our company receives inbound shipments less than carload by way of The Pennsylvania Railroad in interstate commerce (Tr. 802); the time element required in shipments have a lot to do with it; it is an important factor and if that time element can be reduced by the railroad on particular shipments for the movement of which we are using the railroad both inbound and outbound, that would be of benefit to our company (Tr. 803); obviously, any improvement in the service would be an improvement and would be of a benefit to us (Tr. 804). Whatever the improvement is, we would very much like to have it (Tr. 804).

REDIRECT EXAMINATION

Wherever the service could be facilitated or improved, why of course I would be delighted, and obviously so; it makes no difference what truck line would give the service; perhaps I can answer the question this way, by saying that I would be very happy to get any extra service or any better service that might be made available, from whatever service it might come (Tr. 807).

Victor S. Fleser

We set forth the following from protestants' witness Victor 8. Fleser, located in Moline, Michigan:

I can't use the railroad service, but if it were improved, I would like to have an improved service, yes (Tr. 818).

Thomas Clyde Patterson

We set forth the following from protestants' witness Thomas Clyde Patterson, located in Martin, Michigan:

DIRECT EXAMINATION

The time element is vital in connection with deliveries on our incoming freight (Tr. 834); in a lot of cases, a delay of 24 to 48 hours at time of delivery is vital to us (Tr. 834); we are using truck service because we are getting prompter service (Tr. 834).

CROSS-EXAMINATION

The witness was asked the following question:

"Well, now, Mr. Witness, would it be of advantage in your business if your shipment by rail could be shortened from 24 to 48 hours; that is, in the time of delivery, if that could be done?" Answer, "Oh, you have asked me a foolish question."

Mr. BARKELL. "That is not a foolish question."

Mr. EGGERS. "That is what we are interested in knowing.

Answer, "All right, yes."

George Carlton

We set forth the following from protestants' witness George Carlton, located in Mackinaw City, Michigan:

That if The Pennsylvania Railroad should have The Willett Company put on some kind of an operation that would handle this particular commodity, that would be of present benefit to my business, as it has been explained to me (Tr. 900).

IV. DISCUSSION OF EXCEPTIONS NUMBERED 1 TO 12

From pages 58 to 85 of these exceptions there are set forth twelve different objections to findings of the Examiner. In some instances more than one objection is made under each specification. It is rather difficult to reply to these exceptions for the reason that the arguments are duplicated under many different headings. will, therefore, endeavor to briefly discuss the objections raised under the twelve specifications, and then enter into a general discussion of some of the points raised thereunder and duplicated in other portions of the exceptions.

. Specification No. 1

Applicant says regarding Specification No. 41:

"The factual findings of the Examiner with respect to what is sought and the manner in which the operations will be conducted. are generally correct."

The exceptions raises the proposition that these findings "are generally entirely in error" and then proceeds to give five different specifications under this number. We will discuss them as (a), (b), (c), (d), and (e).

Protestant objects to the Examiner's finding on Sheet 2 as follows: "the service is confined to transportation which is auxil-

iary to and supplemental of the rail service."

(a)

Protestants claim this finding is not correct; that the applicant wants to solicit truck business generally and will move the freight from many points without any prior or subsequent rail service whatsoever.

The protestants are entirely wrong in their statement. Applicant's official witnesses testified that under no circumstances does the applicant solicit any freight of any kind whatseever, and that all of the solicitation of freight is done by The Pennsylvania Railroad in the regular course of its business, and that the applicant has nothing to do with it whatsoever, that its only business is that of a line haul operator in station to station operations and has absolutely no connection with the public whatsoever. All of the freight involved will move on the bills of lading and under the tariff of the railroad. The applicant has no tariffs nor bills of lading.

Many imaginary ghosts have been created by the protestants for the sole purpose of defeating this application and the statement that the applicant's truck business generally will move from many points without any prior or subsequent rail movement whatsoever is one of these imaginations. As a matter of fact, practically all of the freight will have a prior and subsequent movement by rail. There are a few points, and a few points only, where the freight will not have a prior and subsequent movement by rail, and the establishment of the two key points, Grand Rapids and Fort Wayne, will adequately protect everybody involved.

(b)

The second point raised under this specification by protestants is that the paragraph in Examiner's report set out on Sheet 2 wherein they say that it is only proposed to transport freight "originating on the lines of the railroad or its connections," and the protestant state that the record shows this is not true and that the applicant seeks to go far beyond that.

The finding of the Examiner in this respect is absolutely correct.

All of the freight involved originates at points on the lines of the railroad or its connections or is destined for these points. The order restricts the applicant from serving any cities or towns that are not located on The Pennsylvania Railroad. The evidence is conclusive that not a single pound of freight will move except to or from one of these points on The Pennsylvania Railroad or its connections over the routes involved. It all must move on the railroad bills of lading. The applicant will have no connection with anybody except The Pennsylvania Railroad, and all of the

freight will come to it from The Pennsylvania Railroad or will be delivered by it to The Pennsylvania Railroad. Naturally some of the freight involved will come from the connections of The Pennsylvania Railroad, but the applicant will have absolutely no relationship with any of The Pennsylvania Railroad's connections.

(c)

The protestants claim that the Examiner's finding on Sheet 3, to the effect that it is proposed to render a more frequent and faster service to the various points along the routes is not justified by the record. This criticism is unfounded. The evidence in the record is to the effect that every point on the routes involved will receive a faster service and that the movement of freight will be expedited from 24 to 72 hours and that in many instances the service will be more frequent than that rendered by rail.

(d)

The protestants state that the Examiner's blanket finding in the next to the last paragraph on Sheet 3 (almost repeating verbatim the statement of the claims of the applicant with respect to the claims of the applicant) with regard to the savings, without citing anything in the record to support it, is a particularly bad error.

Protestants claim that these claims were shattered and thor-

oughly discredited at the hearing.

Mr. Christie testified at length and in detail regarding each and all of these claims regarding the savings. It will be remembered that protestants fought bitterly to keep all of this evidence out of the record.

Regarding all these claims we are not going to make answers in detail, and are not going to set forth all of the evidence under these specifications, but at another point in the reply we will set forth briefly the evidence which will refute all of the points involved and show clearly what was testified to at the hearing.

(e)

The protestants claim that "the Examiner's finding on Sheet 2 to the effect that 'all of the transportation will be moved under bills of lading issued by the railroad is one of the gravest errors in the entire report."

Wherein this finding is erroneous is not shown by the protestants. The evidence is clear and uncontradicted that all of the transportation will be moved under bills of lading issued by the railroad orbits connections; that applicant issues none and does not propose to issue any.

Protestants then assert that the railroad and the applicant will be thus violating all the rules of the Commission and plain provisions of the statute and that this is discriminatory in the worst form. They claim that the railroad and the applicant propose to violate the statute and then to use that very fact as one of the prime reasons why this particular applicant should be granted the authority. What rules of the Commission are thus violated, or what plain provisions of the statute are involved the protestants do not state?

Specification No. 2

The applicant contends that the findings of the Examiner that "supplementing the evidence of applicant and railroad employees 42 shippers representing various businesses at points located on the proposed route, testified as to the necessity for and convenience of all of the considered services." The protestants make no claim in their point that this was erroneous but in their discussion they argue apparently that it was.

We have set forth at other places in this reply excerpts from the evidence of the witnesses, which, in itself, will refute the claims made by protestants under this specification. However, there are two principal objections raised under this specification

and we will discuss them as (a) and (b).

(a)

Protestants object that not a single one of these witnesses testified that there was any actual need for the service. We have shown at another place in the reply that every one of the 42 witnesses so testified for the applicant and that most of the shipper witnesses for the protestants so testified.

(b)

Protestants claim that the witnesses for the applicant merely testified that it would be to their convenience to have the faster service than that presently received. This statement is equally incorrect, as will be seen at another place in our reply where we set forth excerpts from the evidence.

This claim is rather inconsistent with protestants' objection to the finding under specification (b) point (c) hereinbefore discurred, wherein it is claimed that the finding of the Examiner is unjustified that the applicant proposes to render a faster service.

to the various points along the route.

Specification 3

The applicant states that "the finding of the Examiner set forth on Sheet 4 that these witnesses testified that 'such service would be decided convenience to them' is correct."

Under this specification the protestants claim that this is not

correct.

Again we refer to another portion of our reply where we have set forth extracts from the evidence and there it will be seen that every one of applicant's 42 witnesses testified that the proposed service would serve their convenience and necessity and many of them showed specifically what importance it was to them, in expediting the movement of their freight.

Specification 4

Under this specification protestants object to the Examiner's statement that

"The statement by the Examiner on Sheets 2 and 3 that he gave consideration to another application by this applicant and that facts in that case were partially responsible for the determination of the issues in this case."

Protestants do not set forth the wording in the finding which

he objects to, but it is as follows:

"The proposed operation will be conducted in the same manner and under the same conditions as those operations now conducted by applicant over its present authorized routes, all of which were considered and discussed at some length by the Commission, Division 5, in Willett Company of Indiana, Inc., Extension—Illinois, Indiana and Kentucky, supra, and therefore no further discussion along this line is necessary."

The evidence in the present case is uncontradicted that the applicant is now operating exactly the same type and kind of service for The Pennsylvania Railroad over its 25 routes now in operation and that the proposed service is exactly the same type and kind. By no stretch of the imagination can it be error to refer

to this former case.

Immediately following on Sheet 3 the Examiner continues as

follows:.

However, in the above mentioned case Division 5 attached certain conditions to the authority granted with a view of assuring that the authorized transportation would not be a duplication of and in competition with existing highway service. One of these conditions was as follows: Shipments transported by applicant

shall be limited to those which it receives from or delivers to the Railroad under a through bill of lading covering in addition to movement by applicant, a prior or subsequent movement by rail."

The Examiner goes on to refer to the original Kansas City Southern case, 10 M. C. C. 221, and then refers to the fact that subsequently in the latter proceeding reported in 28 M. C. C. 5, the Commission modified the requirement to permit the motor carrier to transport traffic which had not received a prior or subsequent movement by rail.

And at a later date a key-point restriction was inserted in the Kansas City Southern case in lieu of the prior and subsequent

movement by rail clause ..

These references by the Examiner to the prior Willett case and the Kansas City Southern case are entirely proper and commendable. The facts in the prior Willett case and the present Willett case are absolutely identical. Profestants make no showing at all that the facts are different.

This does not amount to, as stated by protestants, that the case was already decided before it was heard, that no useful purpose

would be served by discussing it.

The protestants thereproceed to say that "the applicant throughout the proceeding indicated that he felt he had the case already won before it was tried on the basis of precisely what the Examiner has now said." Protestants claim that this is not fair and say that it is not in accordance with due process or the rules of the Commission.

It is very difficult for one to restrain himself in making reply to such baseless accusations.

Just wherein it is not in accordance with due process or the

rules of the Commission the protestants do not say.

Protestant then proceeds to say that "this has been a particularly grave exhibition of disregard of the record and we feel that the entire matter should be reopened and gone into thoroughly before any final disposition is made."

The only reply which we care to make to such an accusation is that the only reason for any kind of reopening would be for the specific purpose of a calling to account for the making of such

baseless charges against an Examiner.

Under this specification the protestants final paragraph asks that a finding be made that the prior cases mentioned by the Examiner have no application to the present case.

This last criticism is likewise without merit and falls in the same category as the other objections hereinbefore referred to.

Specification 5

Under this specification protestants claim it was error upon the part of the Examiner "in excluding the limitation heretofore imposed on the railroad by giving consideration to the facts of record in other cases, but upon which there was no showing in this case as set forth on Sheet 3." We have discussed all the objections of protestants under its Specification No. 4.

Protestants seem to be under the illusion that the Examiner is required to make a recital of all of the evidence on a point in the case to support any finding he may make. They object to the discussion of the change of the conditions from prior and subsequent.

movement by rail to key-point restrictions.

Since when is it error for the Commission to cite other cases as authority for its action in an instant case? There have been dozens of like cases before the Commission. In the earlier cases the prior and subsequent movement by rail clause was inserted, but as the Commission gained more experience and had more evidence presented to it in the various cases it in many instances changed the prior and subsequent movement by rail clause to keypoint restrictions. We have discussed the prior and subsequent movement by rail clause and key-point restrictions at another place herein and therefore will not go into the matter at length here.

Again under this specification is made the usual claim of no evidence, lack of due process and no showing of any kind as to how

due process was violated.

Protestants then complain regarding their unsuccessful efforts to introduce certain testimony regarding conversations had with certain of the applicant's witnesses during the interim between the first and the second bearings herein, and seem to think that the case should be reopened for that purpose. There is no merit in this claim. Witnesses cannot be impeached in this manner.

Objection is then made that the applicant was permitted to present a great deal of evidence dealing with claimed advantages to the railroad. Insistence is made by protestants that these rulings were error. They claim that the testimony that the parent will benefit by the actions of the child if the authority is granted, clearly is not competent evidence to prove anything, and then claim, that "yet the whole order hangs on that testimony" and then again is made the statement that due process is violated. And again the request is made for reopening.

We cannot tell exactly what testimony is objected to, but apparently it is the complaint regarding the admission of the testimony regarding savings that will be made to The Pennsylvania

Railroad. It is a fact that this type of testimony has been favorably received by the Commission in dozens of cases, in fact in every one of the rail-truck cases this type of testimony has been admitted and favorably commented on by the Commission, and considered by it on the question of convenience and necessity. The Commission has repeatedly held that this saving to the Railroad is of a public benefit and that it benefits the shipping public because any benefits to the railroad is naturally passed on the shipping public. Yet the protestants believe that due process has been violated. It is well to keep in mind that at no point do the protestants ever make any specific claim as to what they mean by due process.

Counsel for applicant can well appreciate the attitude of protestants in feeling that more mention should be made in the reports and findings of Examiners, Divisions and the Commission in setting forth rulings on errors alleged to have been committed. We do not believe there is any objection that lawvers have against Courts and Commissions more than this complaint. Suffice it to say the Courts and Commissions have never completely satisfied the legal profession in this matter, and I-suppose they never will. There is no question regarding the law as to the fact that the Commission is not a judicial body, but a fact finding body. It therefore is not governed by all of the rules and restraints of Courts. Lawyers are naturally in the habit of looking to and citing precedents and are always anxious to have the points raised by them in cases definitely decided by Courts and Commissions so that the same will not only be of benefit in an instant case but also that the same may be used as precedents in other cases. The Commission has on a number of occasions held that it not bound by the rules of res judicata. Protestants cite no authority of any kind sustaining their positions. There is no such authority. The Commission is not compelled as a fact finding body to set forth a volume of evidence in its findings.

Specification No. 6

Under this specification protestants object to the finding of the Examiner that the protestants "take the position that the existing motor carriers in the specific territory should be offered opportunity to improve their present service and facilities before authorization for new service is granted."

Protestants make the usual objections under this specification that there is no evidence, etc. Applicant believes the finding is a fair conclusion and finding to be drawn from the evidence. Protestants took the position that the applicant and The Penusylvania Railroad did not understand the needs of the shipping pub-

lic and that the protestant carriers did, and that the services of the protesting carriers was scheduled to meet the demands of the shipping and receiving public as they understood and as the Railroad and applicant did not. Their evidence was and the exceptions state that the protesting carriers have practically no less than carload freight to the intermediate towns along the routes involved, but that pevertheless they understand what schedules of operation are pecessary. They state that in many instances the proposed scheduled operations of the applicant are not in line with the needs of the public. Mr. Christie, testifying on behalf of The Pennsylvania Railroad, very clearly stated that the schedules in the main were correlated to the schedules of The Pennsylvania Railroad. This was not comprehended by the protestants. On what other basis could these schedules be made up? On what other basis could they be maintained! The service sought is an auxiliary and supplemental service to the freight train service of the railroad and certainly the schedules should be made to conform to the railroad schedules: These schedules. the evidence showed, naturally will be changed from time to time as the schedules of the railroad are changed. >

Protestants in the evidence state that the schedules of the applicant therefore are not in line with the needs of the public but that they will change their schedules to meet the demands of the railroad. The protestants further stated that they would be unable to move the freight of the Pennsylvania Railroad on their present schedules but would change their operation by putting on additional schedules and equipment to meet the demands of The

Pennsylvania Railroad.

Under this condition of the record, the finding of the Examiner is very clear, plain and fair, that the protestants desire an opportunity to improve their service. Apparently the word which is unsatisfactory to the protestants is the word "improve." The applicant believes that the word "improve" is proper under the circumstances and under, the evidence. Probably the word "change" would suit the protestants better than the word "improve." In any event we believe it to be a fair interpretation of the evidence that the protestants would necessarily have to improve their service, particularly as pertaining to the schedule to meet the scheduled requirements of The Pennsylvania Railroad.

When comes another one of the blasts by the protestants at the Examiner when they say at the bottom of page 67 and the top of the blasts by the protestants at the examiner when they say at the bottom of page 67 and the top of the blasts by the protestants at the examiner when they say at the bottom of page 67 and the top of the blasts by the protestants at the example of the blasts by the protestants at the example of the blasts by the protestants at the example of the blasts by the protestants at the example of the blasts by the protestants at the example of the blasts by the protestants at the example of the blasts by the protestants at the example of the blasts by the protestants at the example of the blasts by the protestants at the example of the blasts by the protestants at the blasts by the protestants at the blast by the protestants at the blast by the blast by the blast by the protestants at the blast by t

page 68 of the exceptions as follows:

"It is indicated that either the Examiner has failed to read the transcript and our brief or that he has for some reason we cannot fathom deliberately chosen to omit the most vital part of our

case from his finding and at the same time make another finding wholly contrary to the facts of record."

We believe this criticism answers itself.

Then, of course is the usual cry for reconsideration and a new hearing.

Specification No. 7

The protestants then claim an error in the following finding of the Examiner as set forth on Sheet 4, as follows:

"Upon consideration of all the evidence of record the Examiner concludes the record amply warrants the granting of the authority sought, subject to the conditions imposed by the Commission in Kansas City Southern Transport Company, Inc., Common Carrier

Application, supra."

Under this specification are the usual complaints. They complain that the Examiner did not discuss protestants' evidence enough; that he omitted most of the important things the protestants developed. They complain that there was not enough discussion about the carriers already in the field and the service being rendered by them. They then complain that the substance of the finding is that the railroad can have its subsidiary start a new operation regardless.

Here and in many other places in the exceptions the objection is made that when a railroad is involved one measure is to be used and where ordinary motor carrier seeks an extension another measure is to be adopted. This claim of course is ridiculous. The protestants continually take the position that there is absolutely no difference of any kind between an application of this kind and an ordinary truck application. It is one thing for a truck company to start an entirely new operation as a common carrier serving the public generally, and an operation such as sought in the berein application wherein a very limited service is sought and that service being an improvement of an existing service now being rendered by the railroad. A great deal of the record and of the exceptions is taken up with nonsense of the protestants to the effect that there is no difference.

The protestants have taken the position repeatedly that there is no difference between these two types of operations, that there is no distinction between them. The Commission has had this same class of cases before it in dozens of other cases, and have gone into each and all of the contentions which are made herein by the protestants.

Protestants seem to think that some injustice is done to them which is irreparable by reason of the fact that the Commission

or the Examiner even make reference to these types of cases which have had the same questions before them.

The finding of the Examiner, we are sure, is imminently fair and proper and correct and in line with the other cases decided

heretofore.

The protestants under this proposition make the same claim they have made repeatedly, at the hearing, in their briefs and in their exceptions, that one measure of proof is required of a railroad or its subsidiary and another measure of proof by an ordinary motor carrier. These claims are unfounded. Protestants seem to think that the mere fact that other motor carriers are in the field or part of the field that therefore that in itself precludes a railroad subsidiary from securing the type of authority sought in this application.

Specification No. 8

Under this specification protestants complain that the Examiner failed to give any weight whatsoever to the undisputed evidence that there are sufficient carriers already in the field presently furnishing the same sort of service to the Pere Marquette-Railroad and who could also furnish such service to The Pennsylvania Railroad in this case.

Under this specification they complain that only one paragraph was allotted by the Examiner in his report describing the service of the protestants in this regard. How many paragraphs do they want? Apparently they desire a complete recital of all of the

evidence in the case.

Protestants argue here and at many places that the mere fact that some of the carriers are now transporting freight for the Pere Marquette Railroad that it therefore follows that The Pennsylvania Railroad must also employ them, over the routes set forth in this particular application. There was no evidence in the record regarding what the service was being performed for the Pere Marquette except that it covered a few small routes. What the volume was was never disclosed. What the terms and conditions of the operations were were never disclosed, nor was the frequency of the service, nor the amount of tonnage involved disclosed. Certainly it is not conclusive in this particular hearing that the mere fact that some of these protestants in some places are serving the Pere Marquette should be conclusive that they also should impose their services upon The Pennsylvania Railroad covering the routes in question.

The protestants repeatedly claim that there are sufficient carriers already in the field. The undisputed evidence in this case

is that it would take several of these carriers to perform the service

sought by the applicant.

Again the protestants claim "It is our position that the Commission in saying that a railroad or its subsidiary may be accorded the right to institute a new operation despite the existence of adequate transportation facilities is interpreting the statutes to mean that special privileges are to be accorded a railroad." This is another illustration of protestants' position that no certificate should be granted to the applicant simply because of the fact that there are other motor carriers in the field which are rendering an entirely different service, without any reference to other elements of testimony, in the case.

Protestants then says, "In other words we might just as well have taken no part in the proceedings insofar as the Examiner's report is concerned." We are tempted to say "You have got something

there, brother."

Specification No. 9

Under this specification protestants claim that the Examiner's finding "is erroneous wherein he says that in general the proposed authority is warranted" and despite the fact that the record was without any supporting evidence whatsoever going to show that the public convenience and necessity actually require the service. They again claim that protestants have been defined due process in many particulars.

Again protestants shout that there is no proof of public con-

venience and necessity.

They then make the claim "as even the applicant will be forced to admit the only thing to be found in the record to support any kind of an order is the claim and showing of the railroad that this may save them some operating time and possibly some expenses." At other places in the exceptions protestants criticize the findings and holding in the Kansas City Southern case and say that they have not read the record in that case. With these kinds of accusations and criticisms the conclusion is almost inevitable that the protestants have not read the record in the instant case, or prefer to ignore it.

Again they say that our testimony deals entirely with conven-

ience to the raidroad, which of course is incorrect.

"They also state again that nobody testified that they actually need the proposed service. This of course, is likewise incorrect.

Again they criticize the Kansas City Southern case as not in accord with the law. How it is not in accord with the law they never state.

Then protestants claim that the facts in the instant case are not on a parallel with the facts in the Kansas City Southern case.

At different places in the exceptions they argue at length regarding this point. Of course, there is some difference in all cases. No two are ever exactly alike: As far as the main essentials are concerned this case is on all fours with dozens of other rail-truck cases granted by the Commission and it is beside the question to discuss at length such unfounded statements of protestants.

Then the complaint is made that the Commission in other cases has taken the position that it makes no difference whether this service is already available or not so long as the railroad simply indicates that it will make no use of it whatsoever. Protestants then state that this is the legal position taken by the railroad in this case and that we had warning throughout the hearing that they were going to rely on that precise doctrine.

More epithets are then thrown at the Examiner's findings by

calling them "outrageous."

Reference is made by the same kind of argument regarding the

Pere Marquette service being rendered.

Complaint is made by protestants that such grant would never be made to an ordinary common motor carrier without a showing of prodigious strength.

The Examiner is accused of having crossed off the protestants

showing, etc.

The protestants then go again into the question of convenience and necessity and claim that all of the testimony of the railroad.

witnesses had been "exploded" by the protestants' proof.

Protestants make several claims regarding the testimony of applicant's 42 witnesses. These claims are unsupported by the testimony, extracts of which we have set forth at other portions of this reply.

Then for good measure another epithet is thrown at the rail oad by charging them with "arrogantly" taking a certain position.

They also charge the railroad with boasting.

Again the accusation is made of failure of proof by the applicant of convenience and necessity.

Specification No. 10

Under this specification protestants claimed that "the grant is based on a discriminatory application of the statutes." No new argument is advanced under this heading by protestants. They charge that the Commission cannot say that the statute means one thing when a motor carrier is before it in another thing when a railroad is somewhere in the background and they charge that the Kansas City Southern and other cases, have by indirection said precisely that same thing.

The accusation is made that "If there is any other ground except an attack on the financial ability of the applicant it has not been 'called to our attention."

Again the accusation is made that the findings amount to a denial of protestants' rights under the statutes it amounts to a discriminatory application of the law.

The applicant is again charged with arrogance and protestants set up the silly proposition that the applicant believes and takes the position that an application of this kind cannot be defeated.

We believe all of these complaints are unfounded.

Specification No. 11

Protestants under this specification complain that many errors of the Joint Board in admitting and rejecting the evidence noted and discussed in protestants' brief were not mentioned and ne factual findings were made on any of the many important points thus raised in the trial of the proceedings.

These claims are likewise in error.

Specification No. 12

Under this specification complaint is made of the failure of the proposed report to limit the authority to less than truckload traffic.

The record is repleat with instances where protestants did not, could not or would not distinguish between less than truckload traffic and less than carload traffic. There is no such thing as less than truckload traffic as far as the railroad is concerned. Its movements are all carload or less than carload. Less than carload and less than truckload are not synonymous. Therefore the evidence was to the effect that The Pennsylvania Railroad desires to turn over to the applicant less than carload freight and not less than truckload freight. It could not turn over less than truckload freight to the applicant because it is bound and governed by its tariffs which only provide for carload and less than carload freight.

The protestants then complain that they are astonished that the Examiner did not so restrict the order.

Then the protestants make another unfounded accusation that "many of these statements were made because we were insisting that they were seeking authority to handle both kinds of traffic. The statements they made were directed toward lessening the opposition by minimizing the importance of what they sought."

In the next breath the claim is made that "beyond dispute they were seeking only the right-to transport less than truckload traffic.

etc." This, of course, is inconsistent with the claim made im-

mediately prior thereto.

In the applicant's testimony we outlined every one of the applications which the applicant has filed with the Commission in exactly this same type of service whereby certificates have been granted to the applicant covering the 25 routes now in operation. The evidence in every one of these cases has been exactly the same, that the only type of service sought regarding this phase of the subject is less than carload freight. No claim has ever been made that the applicant desires to transport for The Pennsylvania Railroad or that The Pennsylvania Railroad desires any other traffic transferred in this type of service than less than carload freight.

Then the Examiner is charged with using "weasel words" because he found that the service "shall be limited to service which is auxiliary to or supplemental of rail service." There is no question regarding these words; the Commission has used them in dozens of like orders and certificates. In this class of cases the Commission limits the applicant by various restrictions, and the restrictions are in the instant order, to service which is supplemental and auxiliary to that of the railroad. The usual five conditions as set forth in the Examiner's recommended order are the same as are included in the usual case of this type. In spite of the accusations made by protestants the service is kept within such restrictions.

Reply to Protestants' Heading "General Discussion"

Under this heading protestants again repeat all of their arguments under different arrangements.

At one point under this heading they set forth ten different numbered paragraphs which they contend are the only points made by the applicant. These same points are made at other places in the exceptions. Two or three of them we have discussed under separate headings at another place in this reply:

At the outset under this general discussion the accusation is made that the Commission has committed fundamental errors and in allowing itself to be misled into its present position.

We are not going to review again all of, the objections raised under this heading because they have been raised several times under other parts of the exceptions.

The only point discussed under this heading which differs from other portions of the exceptions is the request for oral argument. The applicant has no objection to oral argument, but believes that under the circumstances it will serve no helpful purpose. Briefs

have been filed by the parties in interest on both sides; protestants have filed exceptions herein. The exceptions herein filed as a matter of fact amount to nothing but an additional brief on the part of protestants. They have had every opportunity to prepare their case and to present it by argument. Protestants had an unusual opportunity in the preparation of their case as they had several months time between the first and second hearings in which to prepare their case and after they had heard the applicant's testimony and had an opportunity to thoroughly comb the transcript covering applicant's evidence.

Reply to Protestants' Heading "Conclusion"

Under this heading many of the old arguments are repeated, including the request for oral argument. The only additional reasons given for wanting oral argument is, that counsel yearn to appear before the Commission and have the opportunity of being quizzed by members of the Commission and have the opportunity of counsel for protestants to equally quiz the members of the Commission.

Reply to Separate Sheet Attached by Protestants to Exceptions

On this sheet, the typewritten sheet attached to the exceptions, Interstate Motor Freight System attempts to interpose certain elements which were not introduced in the evidence, and which are not in accord with the facts in the case.

The first statement made on this sheet is to the effect that Interstate Motor Freight System has spent many hundreds of thousands of dollars in starting, promoting and conducting its operations. There is no evidence regarding this fact in the record. Well, so has The Pennsylvania Railroad. So has the applicant spent a great deal of time; money and energy in developing a specialized business which thoroughly and completely understands this particular type and kind of business and has present routes of this type of operation for The Pennsylvania Railroad.

The next statement is to the effect that its main office is at Grand Rapids, Michigan, and that this is the heart of its system and is also one of the principal points the applicant proposes to serve. There is no such evidence as to where the heart of this protestant's system is. Unquestionably there is no doubt that it's main office is at Grand Rapids, Michigan. The Pennsylvania Railroad also has an office at Grand Rapids, Michigan, and Grand Rapids is the heart of the operation of The Pennsylvania Railroad in the State of Michiga, and will be an important point for the applicant in its operations under the proposed application in granted.

The next observation is that the proposed order if permitted to stand will therefore destroy much of the value of this protestant's investment at one stroke. If an investment representing years of work and thousands of dollars is to be destroyed on the strength of the sort of evidence presented in this case, then the public interest is certainly being served-in a strange fashion. There is likewise no evidence in the record regarding these statements. There is no evidence of any kind whatsoever that that particular protestant will have any value destroyed. The only type of freight involved in the application is 1 ss than carload freight. The protestants in their evidence and in their exceptions several times state that they do not have any considerable amount of less than carload freight. The uncontradicted testimony therefore is to the effect that they have very little to lose if they lost all of the less than carload freight and there is nothing in the record to indicate that they are going to lose any of it.

If statements off the record are going to be considered in this case, then the Commission should take into consideration the long history of The Pennsylvania Railroad in its operations in the State of Michigan. It is a matter of common knowledge that with the advent of motor carriers the less than carload freight of the railroads has gradually been diverted from the rails to the trucks. Regardless of what the reasons may be, nevertheless this is a fact. The facts known to everybody are to the effect that many rail branches have been compelled to discontinue by reason of the institution of truck service, in various parts of the United States. By the type of service that is sought in the herein application, the railroads are trying to retain that portion of their less than carload freight which they have left.

The next statement is argumentative to the effect that since applicant's proposal strikes at the very heart of protestants system it will undoubtedly result eventually in badly crippling protestants' ability to serve many of the points the railroad presently does not propose to serve. There is nothing in this case warranting any such conclusion. The last claim on this particular inserted sheet is that "the granting of this certificate, therefore, is in effect a gift with untold thousands at the expense of one of the pioneers in the motor carrier industry." This applicant and The Pennsylvania Railroad are not seeking any gifts. The, railroad is not endeavoring to take away from anybody anything that belongs to them. They are not trying to enter any new fields. Their less than carload freight has constantly been taken away from them by competing motor carriers. The effect of the present application will enable the railroad to conserve that which already belongs to it. It is not seeking new business. It has the right to conserve that which now belongs to it. The Pennsylvania

Railroad has the fundamental belief that were it compelled to turn its less than carload business over to competing motor carriers they would lose it to these competing motor carriers and would still further suffer tremendous losses. Profestants are right in saying that effectively the service being performed by such companies as the subsidiary applicant is the same as if the service were being performed by the railroad itself. That is one of the main reasons why The Pennsylvania Railroad desires not to employ competing carriers. It will not lose its business in this manner but will be able to retain it.

V. General Reply to Exceptions

It will now be our purpose to reply to the many objections and exceptions raised which are scattered and duplicated throughout the exceptions. We will also cite authorities to sustain our essential positions.

First of all, applicant submits under the law The Pennsylvania Railroad has the right to select its own agent in the performance of the agency involved in these proceedings, and that the Commission is without jurisdiction to compel it to deal with any agent other than its own choosing. We will discuss the first of these propositions first, and the second proposition last.

In the case of the Saint Louis Drayage v. Louisville and N. R. R., 65 Fed. 39, decided in 1894, involving an action to recover damages for unjust discrimination, based on the fact that the railroad, by contract, absorbed certain drayage charges of a drayage company competing with plaintiff in respect of traffic between East Saint Louis and Saint Louis, and refused to enter into a similar arrangement with the plaintiff. The Court held that the railroad could select its own agents or its own connecting carriers, at common law, to perform such a service and cited as authority A. P. & S. Railroad v. D. & O. Railroad, 110 U. S. 667. The Court said further, however, that:

"The results cannot be different whether the contract between the transfer company and the defendant be regarded as a connecting line between two independent carriers engaged in interstate, commerce or whether it be regarded as a selection by the railroad company of the transfer company as an agency for the delivery of defendant's freight between East Saint Louis and the city of Saint Louis. The law is that the plaintiff cannot recover,"

The Interstate Commerce Act has changed the common law to a considerable extent as to the connecting rail carriers, but there is no such provision in the Motor Carrier Act with respect to connecting truck carriers or connecting rail and truck carriers.

The foregoing decision and quotation were quoted as authority by the Interstate Commerce Commission in a very important case known as Transfer of Freight Within Saint Louis and East Saint Louis by Dray and Truck for and on behalf of railroads, 155 I. C. C. 129, at which this particular subject was discussed at pages 141 to 144. On page 143, in answer to claim by a group of shippers that they had not only the right to adequate service but also might dictate the means employed to effectuate it, the Commission had the following to say:

We cannot agree with this concept of the law. The primary duty of the carrier is to furnish reasonable and adequate service and facilities, and that done, it has the right to choose its methods

and its agencies,"

This has always been the position of the Commission, and the Saint Louis case was quoted with approval as authority in the decision handed down in 1934 in the case of Motor Truck Club of Massachusetts, Inc., v. Boston and Maine Railroad, 206 I. C. G. 18, at page 21, of which the Commission had the following to say:

"One of the complainant's objections to defendant's operation of its store door service is that it employs only one truck man at all points except Boston. Defendant's fiability as a carrier under this service extends to and from the store door. It is entitled, as a matter of law, to select its own agent for the performance of the store door service (citing the Saint Louis case) and in its exceptions to the Examiner's tentative report complainant recognizes this right of the defendant."

In the Louisville and Nashville case, 30 M. C. C. 121, one of the group in question, the American Trucking Association and certain motor carrier competitors, attempted to prove that the independent motor carriers could render not only a more efficient service, but a more economical service in fieu of the express agency which the railroad had selected as its agent. Three different plans were set forth under which this might be done, as more fully explained in the opinion of Mr. Eastman. After considering these plans in detail and the objection to the railroad to the adoption of any of them, it was held by the Commission that the Railroad had the right to select a carrier for the performance of the service, notwithstanding the availability of the existing truck carriers to perform such service.

Referring back to the Supreme Court decision first hereinabove cited, the Commission and Division 5 have separately stated that the Commission has no authority to compel joint through routes or joint through rates between ra Iroad and truck companies, but that any such arrangements are purely matters of voluntary agreements.

In our present case, the applicant feels that there is conclusive authority for it being chosen as the agent of The Pennsylvania Railroad. The record herein justifies this position. Protestants seriously objected at all times at the hearing, to the reasons being kept out of the evidence and partially succeeded, although erroneously and over applicant's objections. However, the record is complete with evidence justifying the choice of applicant as the agent to perform the service sought.

Kansas City Southern Case

Protestants have a great deal to say regarding the Kansas City Southern case. First there is the objection that the Examiner has indicated that the prior decisions of the Commission are completely in point and that these decisions govern his findings. It is fundamental that the Examiner should follow the adjudicated decisions of the Commission and wherever decisions are found which are completely in point they naturally should be cited and followed. In this particular instance the Examiner has cated one of the former cases of the applicant, which was entirely; in our judgment, on all fours, parallel.

The protestants object that the Kansas City Southern Transportation Company, Inc., composition carrier application, 28 M. C. C. 5, decision is not parallel in all instances. A great many references are made to this decision by protestants, and there is an attempt made upon their part to analyze each and all of the various elements of evidence contained in the Kansas City Southern case in an attempt to show that none of the points in the two cases are parallel. We have pointed out hereinbefore that naturally there are no two cases which are exactly alike in every minute detail, just as there are no two grains of sand exactly alike. However, within the bounds of reason it is our judgment that the Examiner was eminently correct in citing this case and holding that it was exactly the same type and kind of case, with a background of evidence the same.

Protestants at various portions of their exceptions scathingly attack the Examiner because he has cited the Kansas City Southern case as authority, and charge him with having made up his mind in advance. This, of course, we think is unfair and unjust.

At various points in the exceptions protestants make the statement that the facts of record are different in the two cases, but
all we have stated is the bare statement in the exceptions to that
effect. The reasoning of the Examiner is referred to as being
falacious, as doing violence to the facts of record, and in violence
to all reason and logic.

The Examiner is charged with being unfamiliar with the facts in the Kansas City Southern case and having indicated that it was hopeless to expect the Commission to reach any conclusion differing from that case, regardless of what the factual situation might be.

For instance, there is the charge that in the Kansas City Southern case there was to be a complete substitution of truck service for local or way car service, whereas in the instant case such would not be the service sought. We will discuss in another portion of this reply this particular situation, which is entirely contrary to the claim made by protestants.

At least the whiter of the exceptions was quite frank where he said, in several cases, that he had not read the transcript in the Kansas City Southern case. This is quite evident from the ob-

jections that are raised in the exceptions.

It is the opinion of applicant that the two Kansas City Southern, cases are exactly in point with the instant case, and that the Examiner acted justly and properly in making reference to these cases, as well as to the former case of the applicant wherein it was granted a certificate under similar circumstances.

. We will from time to time hereinafter refer to the Kansas City Southern cases, and therefore will make no further comment at

this time...

What Railroad Proof Necessary

The protestants charge that "in the present case the applicant has justified its request for authority by merely showing that it is willing to do business for the railroad which refused point blank to have any dealings with any carrier not owned by itself." Then the Commission is charged with using no reasoning in any of these cases in justifying its conclusion in holding that a railroad or its subsidiaries should be granted a certificate. The protestants seem to think that this type of case is exactly like any other type of motor carrier case and that strictly speaking it is absolutely new operation. One of the many challenges in the exceptions is made to this point. The Commission is charged with falaciously holding in all other cases of this type that where a motor carrier is not a subsidiary of the railroad it has no chance to secure any such authority by reason of the fact alone that the railroad "lurks in the background."

On page 90 of the exceptions is the charge "it means that in order that this may be justified it is necessary to conclude that no protestant or group of protestants can ever defeat a request for authority by the railroad and its subsidiaries under any cir-

cumstances."

The applicant herein is only asking that it be heard on the same basis that each and all of the other cases of this same type have been heard. There are very definite things which must be proved in these cases, and the applicant has met these requirements with the proper evidence. The mere unfounded criticisms and scathing denunciations of protestants do not change the situation.

Railroad Testimony

Protestants seem to take the position that the mere fact that a witness is employed as a pick-up and delivery agent for The Pennsylvania Radroad is reason for completely disregarding his testimony on the grounds that he is biased and ask that the testimony of Edward F. Dinkle of Conklin, Mich., be disregarded. We have set out a portion of this witness' testimony in the earlier part of this reply, wherein it will be seen that the man was a very fair and honorable witness, who is not only a pick-up and delivery agent for The Pennsylvania Railroad, but for the other railroads entering his town. Of course, protestants do not want his testimony considered because it was decidedly damaging to them. We will not set it forth again at this point because it is already set out at an earlier place in this reply.

If the contention of protestants is the correct measure of the admissability of testimony, or the weight to be given to witnesses then it should therefore follow that the mere fact that this witness is employed by The Pennsylvania Railroad, and that therefore his testimony should be disregarded, it also follows that the testimony of each and all of the representatives of the carriers on the protestants side of this case be completely disregarded.

It is amusing to note that after protestants ask that because of bias this norm should be disqualified in anything that he says, then they go on to take advantage of what they think to be a portion of his evidence which is favorable to them.

Again profestants claim that "the railroad is the real party in interest in our case, just as it was in the Kansas City Southern case, and this fact should make the Commission look with grave doubt and suspicion on any claim made by the railroad to the effect that it could not use any independent motor carrier service." Protestants argue both hot and cold on this proposition in their exceptions. They are correct in stating that the conditions are the same in the Kansas City Southern case as they are in the instant case. No one is more vitally interested in this case than The Pennsylvania Railroad and rightfully. All of the transportation involved is Pennsylvania Railroad transportation, and one of its main reasons for desiring its own subsidiary to handle this trans-

portation is that it desires to keep this transportation and not have it taken away from it by some independent motor carrier operator.

Applicant's Shipper Witnesses

Protestants advance the proposition that since only four of applicant's shippers were sworn and examined on the stand, that it was only necessary to make reference to the testimony of these particular four witnesses. Protestants then state that in their analysis of the evidence they would therefore only refer briefly to the statements made by these four witnesses. And briefly it was.

Without repetition at this particular point, we again refer to the extracts of the evidence which we have set forth in the early part of this reply wherein it was shown that each and every one of the four shipper witnesses who testified on the stand for the applicant testified to convenience and necessity and each and every one of the stipulations of applicant's 38 witnesses also testified that the convenience and necessity would be served by the granting of the certificate as far as they were concerned. Without repeating here we again refer to those extracts of evidence herein and particularly to the agreed cross-examination of these thirty-eight witnesses.

Applicant's Proposed Service Will Serve a Public Need and be in the Public Interest

It is the vigorous contention of applicant that convenience and necessity in this type of case is exactly the same as in all other types of motor carrier cases, and that there must be shown a complete inadequacy of available service upon the part of existing motor carriers in the territory before there will be a justification for granting an application such as is herein sought. The contention of protestants is not the correct statement of the law. First of all, there is the responsibility of the applicant to show that it is fit, willing and able to properly perform the proposed service, and to conform to the provisions of the Motor Carrier Act. There is no contention that applicant is not fit, willing and able, nor has any such point been made in the exceptions. But once this proposition is established, then it is incumbent upon the applicant to show that the proposed service will serve a public need and be in the public interest.

On this proposition we first cite two quotations from the case of Kansas City Southern Transport Company, Inc., common carrier application, 10 M. C. C. 221 (234), wherein Division 5 said:

"Under Section 207 (a), we cannot grant the certificate desired, unless we find—

that the applicant is fit, willing, and able properly to perform the service proposed and to conform to the provisions of this part and the requirements, rules, and regulations of the Commission thereunder, and that the proposed service, to the extent to be authorized by the certificate, is or will be required by the present or future public convenience and necessity:

The record clearly justifies the first part of this finding. The only substantial question is whether it has been shown that the proposed service 'is or will be required by the present or future public convenience and necessity.' In Pan-American Bus Line operation, 1 M. C. C. 190, 203, we said:

Perhaps the best interpretation of the purpose underlying the 'public convenience and necessity' provisions was by the Supreme Court in Texas & N. O. R. Co. v. Northside Belt Ry. Co., 275 U. S.

475, 479, as follows:

The purpose of paragraphs 18 to 22 is to prevent interstate carriers from weakening themselves by constructing or operating superfluous lines, and to protect them from being weakened by another carriers operating in interstate commerce a competing line not required in the public interest.

The question, in substance, is whether the new operation or service will serve a useful public purpose, responsive to a public demand or need; whether this purpose can and will be served as well by existing lines or carriers and whether it can be served by applicant with the new operation or service proposed without endangering or impairing the operations of existing carriers contrary to the public interest.

Applicant also cites New York Central S. Corp. v. United

States, 287 U.S. 12, wherein the court said:

"The public interest is served by economy and efficiency in operation. * * the term 'public interest' as thus used is not a concept without ascertainable criteria, but has direct relation to adequacy of transportation service, to its essential conditions of economy and efficiency, and to appropriate provision and best use of transportation facilities. * * * " (P. 234.)

In Rock Island Motor Transit Company, common carrier appli-

cation, 21 M. C. C. 513 (518-519), Division 5 said:

"We are of the opinion that the proposed coordinated service will serve a useful public purpose, responsive to a public demand or need; that such service through the voluntary cooperation of all or some of the protesting motor carriers is not here practicable; and that the useful public purpose which the proposed new opera-

tion will serve cannot be served as well by existing lines or carriers."

In Missouri Pacific Freight Transport Company, 25 M. C. C. 117, in a case where the operating rights of Alvin F. Steele were

being purchased, Division 5 said:

"There is substantial evidence showing herein the public interest will be promoted by coordinated rail-truck service between Waco and Marlin similar in character to that hereinbefore discussed in connection with No. MC-F-718, the expedited service which would result and the economics which the railroad would realize" (p. 119).

In The Texas and Pacific Motor Transport Company, extension

of operations, 33 M. C. C. 38, at page 38, Division 5 said:

"The substitution of the more efficient motor vehicle service to and from these points for the less efficient rail service, both in its direct and indirect effect, is in the public interest."

In the case of The Willett Company of Indiana, Inc., extension of operations into Illinois, Indiana and Kentucky, 21 M. C. C. 405,

at page 409, Division 5 said:

"We are of the opinion that the present and proposed coordinated service here in question does and will serve a useful public purpose, that such purpose through the voluntary cooperation of all or one of the protesting motor carriers is not here practicable, and that the useful public service which the present and proposed operations do and will serve cannot be served by other existing lines or carriers."

The evidence in the instant case is to the effect that the service being rendered over applicant's 25 routes now in operation is exactly the same as the proposed service. In fact the case just quoted, of the applicant, and the instant case, are parallel in their

entirety. Therefore the reasons are exactly applicable.

We desire now to refer to another case which, in our judgment, is more parallel to the applicant's operation than the ordinary operation. The Indiana Railroad for a great many years has operated a line of interurban railroads primarily within the State of Indiana. By reason of the fact that certain portions of its operations were solely within the State of Indiana, they secured a registration certificate from the Commission, and at a later date when securing authority into additional States, filed an application with the Commission for the purpose of receiving a certificate of convenience and necessity and the Commission granted it. In the Indiana Railroad cases, the interurban company was abandoning its freight operations by rail and substituting truck service in its entirety.

At page 178 in Indiana Railroad, extension of operations, Fort Wayne by the way of Muncie, 27 M. C. C. 176, Division 5 said:

"Similarly for the reasons stated at length by Division 5 in the report in that case, we believe that applicant should be permitted to substitute motor carrier service for its present rail service and thereby continue to handle the traffic of shippers it has served for long periods of time. Applicant's retention of its present traffic admittedly can have no effect on existing motor carriers between the same points, and any future diversion of traffic, either to applicant or from the applicant to other carriers will be influenced by the best service available to the shippers. Under such circumstances it cannot be said that competition fostering such improved service is detrimental to the public interest."

In Dixie Ohio Express Company, extension of operations, 30 M. C. C. 291, at page 295, the Commission said:

In New York Central Securities Co. v. United States, 287 U. S. 12, the Supreme Court, in construing the term "public interest" as used in what was formerly Section 5 (2) of the Interstate Commerce Act relating to acquisitions of control, said:

Appellant insists that the delegation of authority to the commission is invalid because the stated criterion is uncertain. That criterion is the "public interest." It is a mistaken assumption that this is a mere general reference to public welfare without any standard to guide determinations. * * the term "public interest" as thus used is not a concept without ascertainable criteria, but had direct relation to adequacy of transportation service, to its essential conditions of economy and efficiency, and to appropriate provision and best use of transportation facilities. questions to which the Interstate Commerce Conimission has constantly addressed itself in the exercise of the authority concerned. So far as constitutional delegation of authority is concerned, the question is not essentially different from that which is raised by provision with respect to reasonableness of rates; to discrimination and to the issue of certificates of public convenience and necessity. [Emphasis supplied.]

The same effect, was held in Louisiana, Arkansas and Texas Railway Company, 22 M. C. C. 213, at pages 216 and 217, wherein Division 5 said:

We are of the opinion that the proposed coordinated service here in question would serve the useful public purposes responsive to a public demand or need; that such service through voluntary cooperation of all or some of the protesting motor carriers is not here practicable; and that the useful public purpose which the proposed operations will serve cannot be served as well by other existing lines or carriers."

In Missouri Pacific Railroad Company, and Missouri Pacific Railroad Corporation in Nebraska, 22 M. C. C. 321, at page 331, Division 5 said:

"The proposed motor services are not competitive with applicant's rail services, and there is no showing that they in any instance invade the territories of any other rail carriers. They may therefore be classified as 'approved operations' as defined in Pennsylvania Truck Lines, Inc.—Control—Barker Motor Freight, 5 M. C. C. 9. It is clear that they have resulted in substantial operating economies and that they have proved to be of material advantage to the public since such services are strictly confined to rail points now served by applicant, their continuance will not unduly restrain competition."

In Pacific Motor Trucking Company, common carrier application, 21 M. C. C. 761, Division 5 said at pages 763-764:

The points in question are admittedly served by other motor carriers, and protestants on exceptions contend that public convenience and necessity therefore do not require the proposed operation. While adequate motor-carrier service, as such, is no doubt available, we have somewhat consistently refused to compel rail carriers to make their coordinate efforts dependent on competing motor carriers. It is clear that applicant's proposed service will expedite deliveries of less than-carload shipments now moving by rail and will in some instances supply pick-up and delivery service not now available. It will also result in an improved service. with respect to carload traffic by permitting a better adaptation of remaining train schedules to its needs. In addition some economies in operating expenses will be effected. There is no question that the proposed rail-truck coordinated service is in the public interest. We have in several instances granted similar authority to other carriers. Illinois Central R. Co., Common Carrier application, 12 M. C. C. 485, Kansas City S. Transport Co., Inc., Com. Car. Application, 10 M. C. C. 221, Seaboard A. L. Ry. Co., M. Operation—Gaston—Garnett, S. C., 17 M. C. C. 413. (Pages 763-764.)

To the same effect is Seaboard Air Line Railway Company, extension of operations, 21 M/C. C. 773, wherein Division 5 said:

"There seems to be little question that the proposed rail-truck coordinated service is in the public interest,"

and again on the same page:

"We find that the present and future public convenience and necessity require operation by applicant."

In Chicago and Northwestern Railway Company, extension of operations, 31 M. C. C. 455, at page 458, Division 5 said:

Nor do we believe that the public interest could be served as well through the utilization of the service of existing motor carriers. While a large number of motor carriers operate in the territory, none serves all of the points involved. Several of the principal motor carriers made offers to perform the motor vehicle portion of the coordinated service. Applicant regards any such plan of coordination with independent motor carriers as imprac-There are several reasons, and it is evident that great difficulties would be encountered. Coordinated service between carriers by rail and carriers by motor vehicle could only be accomplished through the medium of through routes and joint rates, and we have no power to require their establishment. Hence any such plan must be dependent upon voluntary cooperation. On brief, protestants assert that Union Transfer Company, of Omaha, Holdcroft Transportation Company, of Sioux City, and On-Time Transfer Company, of Omaha, serve all of the points involved and that a number of other carriers serve various segments of the proposed routes. The record shows, however, that the three motor carriers named neither individually nor collectively serve all the points involved, and that at least 25 per cent of the stations are not so served. (P. 458.)

New Operation

In Kansas City Southern Transport Company, Inc., 10 M. C. C. 221 this same type of service, at page 235, was held by Division 5 to be a new form of service, and that it will serve a useful public purpose responsive to a public demand or need. What is meant by a "new form of service" is that it is distinct and separate from the old types of service, namely an all rail service or an all motor carrier service. In the sense that it is part by rail and part by motor carrier it is a new form of service.

This was clearly stated at page 235 in the last named decision, as follows:

"Moreover, it is clear that this coordinated rail-motor service will be a new form of service utilizing both forms of transportation to advantage and differing from the service given by the railway alone or by the competing motor carriers alone. That Congress contemplated such coordination is shown by section 202.

(a) of the Act, which declares it to be the policy of Congress, among other things, to improve the relations between and coordinate transportation by, and regulation of motor carriers and other carriers."

In another sense this proposed service is not a new operation but is merely an improvement of a service already being performed. This was made clear in Texas and Pacific Motor Transport Company, extension of operations, 30 M. C. C. 465, at page

467, wherein Division 5 said:

"The proposed extension is not a new operation, but merely an improvement of a service already performed by applicant in its present operations. The bulk of the traffic to benefit from the improvement is already being handled by applicant. If the improved service should attract additional traffic by applicant that fact should not deprive the public of the substantial advantages that would come from more expeditious service. The proposed changes would not deprive any community of service now being rendered and would not result in any reduction of employees. The changes would have the desirable result of more economical operations by applicant. The Joint Board is of the opinion that the public interest would be served by the proposed extension."

In Louisiana and Arkansas and Texas Railway Company, 22

M. C. C. 213, Division 5 said:

"The coordinated rail-truck service differs from the service given by the railway alone or by competing motor carriers alone. It is a new form of service utilizing both rail and motor vehicle transportation to advantage in such a way as to render a merchandise service, which is much less expensive and at the same time more expeditious and more convenient and generally satisfactory to the public served. That these results can be achieved the record leaves no doubt,"

The last case quoted is exactly like the instant case.

In Atlantic Coast Line Railroad Company, extension of operations, 30 M. C. C. 490, Division 5 at page 492 said:

We are also of the opinion that public convenience and necessity require the proposed service. What applicant is seeking is not to enter a new field of service but to substitute a more economical and flexible service. Applicant has been and is transporting the traffic in question by rail, and it is under obligation to continue to do so. The proposed coordinated rail-truck service will result in a saving and a more efficient handling of merchandise traffic as well as in an improvement in the handling of carload traffic. Protestants assert that Thurston Motor Lines serve all of the points involved, and it may be, as contended, that existing motor-carrier service is adequate, but one competitive carrier or class of

carriers has no vested right in the continuation by another of an inefficient method of operation. Rather, we believe it to be the policy of Congress and the proper function of this Commission to foster any form of progress in transportation which will serve the public interest. (P. 492.)

In Missouri Pacific Railroad Company, extension of operations,

19 M. C. C. 605, at page 606, Division 5, said:

"The primary purpose of the authority sought is to afford an improved service to the public along the respective routes through the medium of a coordinated rail-truck service. * * * in addition this will permit faster movement of carload freight moving in the same train to local points as well as other economies in rail operation."

In Seaboard Air Line Railway Company, 17 M. C. C. 413, at

page 432, Division 5 said:

In Illinois Central R. Co. Common Carrier Application, 12 M. C. C. 485, we granted authority, similar to that sought by applicants herein, to the Illinois Central Railroad Company authorizing motor-vehicle service between certain stations on the line of

that carrier in Illinois. We said there, at page 491:

"The inauguration of the coordinated operations here proposed will result in improved service on merchandise as well as carload * *. * The plan proposed by applicant will result in a new type of service, utilizing both forms of transportation to advantage; and differing from the service given by the railroad. alone or by competing motor carriers alone. That Congress contemplated such coordination is shown by section 202 (a) of the Act, which declares it to be, among other things, the policy of Congress to improve the relations between, and coordinate transportation by a regulation of, motor carriers and other carriers. Further, section 213 (a) (1) permits a railroad to acquire a motorcarrier operation provided we find that the transaction proposed will promote the public interest by enabling such carrier other than a motor carrier to use service by motor vehicle to public advantage in its operations and will not unduly restrain competition." (P. 432.)

In the instant case protestants deny and find fault with these statements in cases quoted and deny that in the instant case, the service in question is such a new service. Protestants seem to think that the only thing claimed as a distinguishing factor by the applicant is that the service is being performed by a railroad. This of course is not correct. It is a new type or form of service regardless of who performs the service. In some instances the railroads are performing the service and in some instances trucklines are performing the services and in some instances.

trucklines are performing the services, but nevertheless it is a new type as described and discussed in these decisions which we have quoted.

The decisions are very clear regarding the service being a new type and form and therefore further argument is not necessary.

Unity of Control to Expedite

It is fundamental in cases of this type that in order for the railroad to completely expedite the movement of freight to the best advantage of the shipping and receiving public, it is necessary to have unity of interest between those performing the rail and the motor vehicle portions of the haul, and that the entire operation be under common management and control.

In a case very similar to the instant case, Division 5 decided this very proposition. In Chicago and Northwestern Railway Company, extension of operations, 31 M. C. C. 455, page 458, 459,

Division 5 said:

"In addition, it would be necessary for applicant to make arrangements not with one carrier, but with several, each performing a more or less disjointed part of the service, and it would be necessary for some one or more of protestants to obtain authority to serve stations which they do not now serve. The traffic will involve movements partly by rail and partly by motor vehicle in line haul operations. Applicant urges that, in order to accomplish satisfactory coordination and attain the desired flexibility of rail-truck operation, it is essential that a unity of interest exist between those performing the rail and the motor vehicle portions of the haul, and that the entire operation be under common management and control. In view of the close adjustment of schedules and interchange arrangements which good and dependable service requires, as well as the use of applicant's station facilities and the service of its employees, we believe that applicant has sound grounds for this contention. Protestants also serve numerous points in the general territory not served by the railway. They would find it difficult to adjust their schedules to meet the needs of coordination with the rail service without disrupting their service to the off-rail points. In addition, protestants serve important rail points beyond those here involved, and applicant would find it necessary to divide control over and responsibility. for less-then-carload service in the affected area with motor carriers which would continue to afford a competing all-motor service not only in the territory but on long-haul traffic to and from points beyond." (Pages 458-459:)

In Pacific Motor Trucking Company, purchase 25 M. C. C. 37, wherein Pacific was purchasing Vandergriff and Duda Lines,

Division 5 held that such operation would not unduly restrain competition and that the conditions in Section 213 would be fulfilled.

On pages 39 and 40, Division 5 in part said:

"We find that purchase " will promote the public interest by enabling the Southern Pacific Company to use service by motor vehicle to public advantage in its operations, and will not unduly restrain competition and that the conditions of section 213 have been or will be fulfilled."

Adequate Motor Truck Service Available

Protestants take the position that practically the only issue involved is the question as to whether or not there is available motor carrier service available by independent truck operators. They argue at length that if there is partial or complete available independent motor carrier service over the routes in question that the Commission is powerless to grant a certificate to a subsidiary under circumstances such as we have in the instant case.

This contention of the protestants is definitely decided contrary to the contention of the protestants in practically every one of the cases we are citing in this reply, and need not be replied to in detail.

This same contention was made in Kansas City Southern Transport Company, Inc., 10 M. C. C. 221, at page 235, Division 5 stated the following:

"Is it necessary, however, that applicant be given the desired certificate in order to accomplish this purpose, or can it be served as well by existing lines or carriers? As shown in appendix C, a number of independent motor carriers now afford service to and from most of the points applicant proposes to serve, and between some of the points they maintain several schedules each day. These motor carriers are protestants and they contend that whatever cordination of rail and motor service may be desirable can be accomplished by the railway through arrangements with them and utilization of their facilities, or, at all events, that this method of attaining the result sought should be tried before applicant is permitted to establish a new service.

"The railway regards any such plan of coordination with independent motor carriers as impracticable." It goes so far, indeed, as to suggest that if it contemplated retirement from the handling of merchandise traffic, it could do so more gracefully and at less expense than by entering into joint arrangements with parallel competing truck lines, from which the railway is convinced "it could reasonably expect no bona fide coordination or cooperation." (Page 235.)

Another case in point is Rock Island Motor Transit Company, 21 M. C. C. 513. At pages 518 and 519, Division 5 sad:

"In addition it is urged that in order to accomplish satisfactory coordination of rail-truck operations, it is essential that rail and truck lines have a unity of interest and be under a common manigement and control. In view of the close adjustment of schedules and interchange arrangements which good and dependable service would require; as well as the contemplated use of facilities, we elieve the railway has sound grounds for its contention. We are of the opinion that the proposed coordinated service will serve i useful public purpose responsive to a public demand or need; but such service through the voluntary cooperation of all or some The protesting carriers is not here practicable; and that the iseful public purpose which the proposed new operation will serve annot be served as well by existing lines or carriers."

A similar situation arose in Missouri Pacific Railroad Com-Dany, extension of operations, 20 M. C. C. 563. At page 566, Divi-

non 5 said :

"Certain protestant motor carriers submitted evidence to show hat they already serve most of the territory herein involved and are ready and able to provide all of the facilities necessary to handle all the traffic available. They fear that the proposed services of applicant will have a detrimental effect on their existing operations. No one of the protestants serves all the points on the rail lines, and certain points appear to have no truck service. Applicant seeks only to handle more expeditiously the traffic having a prior or subsequent movement by rail and only intends handling same between stations on the rail line of applicant. It does not appear that the competitive situation with respect to this traffic will be seriously affected or that the traffic now handled by protestants in all truck movement will be materially changed by the granting of the application." (Page 566.)

Again we refer to one of the Indiana Railroad cases wherein motor truck service was substituted in its entirety for the transportation of freight in interurban cars. We quote at length from page 77 of one of these cases, namely, Indiana Railroad, extension,

21 M. C. C. 73, as follows:

"Protestants contend that the evidence does not disclose that existing motor-carrier service is inadequate and that the application should therefore be denied. We have in prior decisions stated that existing motor carriers should normally be accorded the right to transport all traffic which they can handle adequately, efficiently, and economically as against any person seeking to enter the field. We do not believe, however, that the granting of the authority sought herein is fundamentally in conflict with that principle. In the first place, the evidence discloses that there is a need for a continuance of service to Clayton, Pecksburg, Amo, Coatsville, and Fillmore, which is not met by any existing motor:

carrier. As to other points involved herein, applicant is not a newcomer in the field in the usual sense since its facilities will be utilized largely by shippers who have long used and depended upon its service. The authorization of a substitute motor service will not materially intensify the competition which now exists. While it may be conceded that the advent of applicant into two motor-carrier field may divert some traffic from these carriers, the contemporaneous abandonment of rail service will no doubt also contribute to them some new business, since it is inconceivable that applicant could hold all its former customers. In the end any diversion of traffic one way or the other can most logically be attributed to a superior service. It cannot be said that competition fostering such improved service is detrimental to the public interest.

"Moreover, it is evident that the abandonment of rail service herein will result in a need by shippers for additional motor-carrier transportation which must be supplied by existing motor carriers or by a substituted motor-carrier operation by the former rail, carrier. Under the circumstances we consider it entirely equitable to authorize the substituted service rather than to deny the application in order that existing motor carriers may expand." (P. 77.).

Economy of Operation

Protestants argue at length that about the only thing the applicant has shown in the nature of a reason why the application should be granted is the benefit to The Pennsylvania Railroad, and cite the instance of economy to the railroad. At the hearing the protestants bitterly fought the introduction of this type of evidence, and yet in almost every one of the rail-truck cases before the Commission this same type of evidence has been introduced by the applicant and has been received and commented on favorably by the Commission or the Division in writing the order.

This same contention of protestants was made in Kansas City Southern Transport Company, Inc., 28 M. C. C. 5; the Commis-

sion, at page 10, said

"This is the reason for coordinating truck service with the rail service, and, as we have found (and as Division 5 also found), public convenience and necessity require the increased economy, and efficiency which will result from such substituted use of trucks. By the same reasoning, however, public convenience and necessity require the substitution of trucks for way-freight train service regardless of whether there is a prior or subsequent movement by rail. Such substitution is a part of the plan of coordination, and unless it can be accomplished, the full benefits in in-

creased economy and efficiency which the public interest demands

cannot be secured." (P. 10.)

The same thing was stated in the other Kansas City Southern Transport Company, Inc., case, 10 M. C. C. 221. We quote from

page 234 of this case;

"Applicant has referred us to a long line of cases decided under Part I of the act, in which we held in substance that effecting economies and reduction in cost of transportation and increasing · efficiency of transportation service of a particular railroad inure to the benefit of the general public and justify the issuance of a certificate of public convenience and necessity. Applicant cites Texas v. United States, 292 U. S. 522, wherein the court, after stating that it had found in previous cases that the Transportation Act. 1929, set up a new policy "seeking to insure adequate transportation service," said:

* "It is a primary aim of that policy to secure the avoidance of waste. That avoidance, as well as the maintenance of service, is viewed as a direct concern of the public." (P. 234.)

In Rock Island Motor Transit Company, 21 M. C. C. 513, there were many of the objections discussed which have been raised in the instant case, including that of economy. We quote from

page 518 from this case as follows:

"There are a number of motor carriers operating several day and night schedules between Fort. Worth, and Dallas. hearing, counsel for four of them expressed their willingness to enter into interchange arrangements and transport the railway less-than-carload freight between these points on an agreed division of revenue or on a revenue-prorate basis. Their counsel contends that there is not sufficient tonnage of less-than-carload freight moving over the Gulf between Fort Worth and Dallas to justify the proposed service by applicant and that a coordinated rail-truck service through the use of existing motor carriers would meet the needs of the shipping public. On the other hand, the railway contends that any such plan of coordination with independent motor carriers would be impracticable; that it would not be in the interest of the railway to disclose the names of shippers to competing carriers, which would happen in the event of interchange, and that in the event of loss or damage to freight it would be to the benefit of the shipping public to look to one responsibility such as would be represented by applicant and the railway, rather than to different common carriers. It is also contended that, if applicant were permitted to operate to and from the intermediate points only, neither applicant nor the railway could operate economically because of the fact that there would be no saving in car-miles operated and the further fact that the tonnage to and from intermediate points is very light." (P. 518.)

The same kind of a contention was made in Missouri Pacific Railroad Company, extension of operations, 20 M. C. C. 563. On

page 565, Division 5 said:

"We have decided in Kansas City Southern Transport Company, Inc., 10 M. C. C. 221 and in Texas & Pacific Motor Transport Company, 10 M. C. C. 525, and in other cases that operations similar to those proposed by applicant will be economical, will improve the railroad service, are demanded by the public interest and should be approved and encouraged."

Again in Missouri Pacific Freight Transport Company, pur-

chase, 25 M. C. C. 117, at page 119, Division 5 said:

"There is substantial evidence showing, wherein the public interest will be promoted by coordinated and rail-truck service between Waco and Milan similar in character to that hereinafter discussed in connection with MC-F-718, the expedited service which would result, and the economies which the railroad would realize."

In J. H. Axley, extension of operations, 30 M. C. C. 387, at pages

389-390, Division 5/said:

"It is clear that the benefits to be derived from applicant's proposed operation will accrue directly to applicant, but indirectly the public will benefit in that the mountainous route used at present would be avoided and shipments would be delivered nore expeditiously. By the use of the proposed route applicant would also be enabled to operate more economically and should be able to afford a more dependable and efficient service."

In the instant case the evidence is conclusive that the economies are real and it is clear that they can be achieved. In one of the former cases of applicant, the same objections were made to this class of testimony and at page 408 in the case of The Willett Company of Indiana, Inc., extension of operations, 21 M. C. C. 405,

Division 3 said:

"The coordinated rail-truck service differs from the service given by the railroad alone or by competing motor carriers alone. It is a new form of service utilizing both rail and motor vehicle transportation to advantage and in such a way as to render a merchandise service which is much less expensive and at the same time more expeditious and more convenient and generally satisfactory to the public served. Applicant has been performing such service in conjunction with the railroad over several of the routes herein requested since prior to October 15, 1935. That the benefits to be derived from such coordinated service have been and can be achieved is clear."

To the same purport is Dixie Ohio Express Company, extension of operations, 30 M. C. C. 291, we quote from page 295-296 wherein

the Commission said:

If, as held in these decisions, contributions to 'economy, and efficiency of operation,' to the 'best use of transportation facilities,' and to 'the relief of interstate commerce from burdensome outlays,' are criteria of thing in the public interest, then clearly such contributions are evidence of public convenience and necessity in cases such as this. Actually, there is nothing novel about this view. It has underlain to a greater or lesser extent a number of our past decisions. Moreover it is the present national transportation policy, 'to promote safe, adequate, economical, and efficient service.'

"We are also convinced that the use of a reasonably direct and suitable route which avoids the necessity of burdensome outlays, delays, breakage, and annoyance to shippers, incidental to compliance with the regulations of a particular State, is a legitimate operating economy which we should foster and encourage and of the same character as the avoidance of a toll bridge, or of a mountainous route in favor of a level one." (Pages 295–296.)

To the same extent are:

Missouri Pacific Railroad Company and Missouri Pacific Corporation in Nebraska, 22 M. C. C. 321 (page 331);

Louisiana, Arkansas and Texas Railway Company, Common

Carrier application; 22 M. C. C. 213 (216).

There are many other decisions holding this same thing to the effect that evidence pertaining to economies in operation are admissible in evidence and are highly considered by the Commission:

Improved Service and Diversion of Traffic

The purpose of the applicant and of The Pennsylvania Railroad Company, as stated by applicant's witnesses, among other things is the improvement of the service so as to retain the less than carload business, which The Pennsylvania Railroad now enjoys. It is a matter of common knowledge that originally the railroads had all the less than carload business and that gradually through the years with the advent of the motor carrier a very large percentage of this traffic has been diverted from the rails to the motor-carriers. It is the purpose of The Pennsylvania Railroad to retain by the institution of this improved new service that less than carload business which it now enjoys. However, the Commission has held in numerous cases that even if some of this business should be recovered by the rails by the institution of the rail-truck service, nevertheless it would be by reason of a superior and new service and by reason thereof should be encouraged rather than discouraged. There are many cases on this proposition, but only a few will suffice.

The Chicago and Northwestern Railway Company, extension,

31 M. C. C. 455, at pages 457-458, Division 5 said:

"Contrary to protestants' contention; we are of the opinion that the proposed service will not adversely affect the operation of existing a tor carriers. Applicant merely proposes to improve an existing service through the utilization of motor vehicles in rendering a service which will be auxiliary to, supplemental of, and coordinated with the rail service. Applicant does not propose to invade territory of any other carrier. All of the points are stations on the rail line which applicant has served for years and is under obligation to continue to serve. Applicant merely proposes to improve that service in an endeavor to retain existing patrons through offering them a service more in keeping with their requirements under existing merchandising methods. To say that such service will adversely affect the operations of the existing motor carriers is to admit the superiority of the proposed service which protestants strongly deny."

In Great Northern Railway Company, extension, 19 M. C. C.

745, at page 747. Division 5 said:

"There are two motor carriers and a railroad operating between Great Falls and Lewistown, in addition to applicant's rail service. It is contemplated that considerable traffic would be diverted from applicant's present rail operations and the record indicates that some traffic would be diverted from the existing motor carriers if the proposed service is instituted. Applicant's freight agent stated in response to cross examination that such diversion could be expected."

And with this evidence of the probability of diversion a certifi-

cate was issued to the applicant.

We again quote from Indiana Railroad, extension of operations, 27 M. C. C. 176. At page 178 Division 5 in handling a similar situation said:

"Similarly for the reasons stated at length by Division 5 in the report in that case, we believe that applicant should be permitted to substitute motor carrier services for its present rail service, and thereby continue to handle the traffic of shippers it has served for long periods of time. Applicant's retention of its present traffic admittedly can have no effect on existing motor carriers between the same points and any future diversion of traffic either to applicant or from applicant to other carriers will be influenced by the best service available to the shippers. Under such circumstances it cannot be said that competition fostering such improved service is detrimental to the public interest."

In Texas & Pacific Motor Transport Company, extension of op-

erations, 30 M. C. C. 465, at page 467, Division 5 said:

"The proposed extension is not a new operation but merely an improvement of the service already performed by applicant in its present operation. The bulk of the traffic to benefit from the improvement is already being handled by applicant. If the improved service should attract additional traffic to applicant that fact should not deprive the public of the substantial advantages that would come from more expedited service."

In Seaboard Air Line Railway Company, extension of opera-

tions, 21 M. C. C. 773, at page 775, Division 5 said:

"There seems to be little question that the proposed rail-truck coordinated service is in the public interest, nor has it been shown that there will be any material diversion of traffic from existing independent motor carriers."

In Seaboard Air Line, Railway Company, 17 M. C. C. 413, at

page 433, Division 5 said:

"There seems little question as to the proposed rail-truck coor, dinated service being in the public interest, nor does it appear from the records made in these cases that there will be any great diversion of traffic from existing independent motor carriers."

In the instant case, protestants on several occasions state that there is only a small amount of less than truckload traffic now being handled by all of the protestants and, therefore, it is conclusive that there is little chance, if any, of the protestants being affected.

Necessary to Deal With Several Independent Motor Carriers

Protestants raise the point repeatedly that because there are a large number of carriers in the field that that is conclusive and that The Pennsylvania Railroad should not be permitted to employ its own subsidiary. The same condition exists in this case as in practically all of the other cases cited to the effect that it would be necessary for The Pennsylvania Railroad to deal with several carriers rather than one. There is no one particular independent motor carrier herein who serves all of the routes and all of the cities and towns involved: The evidence is clear that The Fennsylvania Railroad desires to deal with only one carrier wherever possible, and the evidence is plain that it can do so more effectively, efficiently, and economically. This is particularly true by reason of the fact that the applicant is now serving practically the entire Pennsylvania Railroad west of the Indiana-Ohio State line in station-to-station operations. There are 25 routes now in operation paralleling The Pennsylvania Railroad in station-to-station operation in that particular territory. The applicant is an existing carrier and one who renders this particular type of service in over-the-road operation and is more experienced in this

particular type of service than any other carrier involved. The applicant and The Pennsylvania Railroad introduced in the evidence the reasons why the railroad desired the applicant. Other reasons it attempted to introduce, but the evidence was objected to by protestants and the Examiner ruled these reasons out, which undoubtedly was error. In any event, though the reasons were ruled out, the evidence is clear with the inferences that can be drawn from the evidence that The Pennsylvania Railroad can be better served by the applicant herein in an extended service in connection with the operation over the 25 routes than any large number of independent operators in the State of Michigan.

This same proposition has been decided in practically every one of the cases which we have cited so far herein. It was decided in Kansas City Southern Transport Company, Inc., 28 M. C. C. 5, Kansas City Southern Transport Company, Inc., 10 M. C. C. 221, and The Willett Company of Indiana, Inc., extension of oper-

ations, 21 M. C. C. 405.

A similar case is Gulf, Mobile and Northern Railroad Company, common carrier application, 18 M. C. C. 721.

On pages 725-726, Division 5 said:

"In order to establish the proposed coordinated service through the cooperation of independent motor carriers it would be necessary for the railroad to make arrangements not with one but with many, each performing a more or less disjointed part of the entire service, and it would also be necessary for the motor carriers to obtain authority to serve many of the rail points which they do not now serve. Moreover, all serve points not served by the railroad, and would find it necessary to adjust their schedules to meet the needs of the coordination with the rail service without disrupting or impairing their service to the off-rail points. It is urged in addition to these difficulties unless the same management controls both means of transportation it would be impossible to coordinate rail-truck service on a sound basis. In view of the close adjustment of schedules and interchange arrangements which good and dependable service would require, as well as the contemplated joint use of stations and employees, we believe that there is sound ground for this contention."

This last case is practically like the instant case and the reason;

ing applies with equal force to it.

The evidence in our case coming from the independent protestant motor carrier operators is to the effect that their schedules do not fit the proposed schedules of the applicant, nor do they meet the requirements of The Pennsylvania Railroad. These protestant witnesses stated that in their judgment the schedules were not in line with those needed by the shipping public and

that if they performed the service for The Pennsylvania Railroad it would be necessary for them to put on additional schedales, schedules which were different from the ones that they need to use in connection with their general motor carrier traffic. It therefore follows that as far as the use of equipment on the highways is concerned, that the putting of equipment on the highway by the applicant would be no different than putting it on the highway by the independent motor carriers as they would be anable to carry it on their, present equipment nor in accordance with their present schedules.

VI. Miscellaneous Points Raised by Protestants

Protestants make the point a number of times that because some of the protestant motor carriers are now serving the Pere Marquette Railroad in a few small routes in what they call a service similar to that of the applicant, that this is conclusive. The mere fact that service may be rendered for one railroad does not prove the necessity for that particular motor carrier serving the applicant. For one thing, there is no showing that the conditions and circumstances of the operations of the two railroads are identical, or that the schedule of operations are even similar. There is no basis of comparison.

From the evidence it is apparent that the Pere Marquette Railroad does not parallel The Pennsylvania Railroad. Therefore, the routes in question are not the same as those sought by applicant. The argument is equally effective then that the applicant is now serving The Pennsylvania Railroad over 25 other routes and doing it satisfactorily and, therefore, because of that reason alone, without taking anything else into consideration, the applicant should receive the extension over the routes in hearing.

Protestants complain of a number of rulings on the evidence during the hearing. This matter has been sufficiently briefed by protestants and we believe they have not set forth any reasons for the reversal or change of the rulings. In any event these objections were not material.

Protestants object strenuously to the reasons given by The Pennsylvania Railroad as to why they prefer their own subsidiary to an independent carrier. We believe the reasons we gave are adequate. These same reasons have been upheld in practically all of the other cases, and need not be further argued at this place.

Protestants take the position that there is only one kind of a certificate of convenience and necessity which can be issued, that it is the same under all circumstances and conditions. This ar-

gument is incorrect. The certificates which have been issued to the applicant covering its present 25 routes in operation are each; and all limited and restricted; the certificate of a motor carrier · engaged in general operations usually is not restricted. The Commission has not acted haphazardly, nor without due consideration in these restrictions, which it has placed in the station-tostation operation certificates. The protestants' contention that all certificates are alike is without merit.

Protestants argue at length that there must be shown a yearning need upon the part of the shipping and receiving public for this type of service. These claims of protestants are not in line or keeping with the decisions of the Commission. Protestants lost sight of the fact that The Pennsylvania Railroad already has the service which it is rendering to its patrons and to require it to show a need for that service is beside the question. The need for The Pennsylvania Railroad's present service to its patrons does not have to be established, nor under the decisions is there a necessity for showing a yearning need upon the part of the shippers and consignees for the railroad to be permitted to improve This matter has been thoroughly discussed hereinbefore, and extracts from the decisions of the Commission have . been set forth which thoroughly answers this contention of protestants.

At many places in the exceptions is there made the claim that there is not one centilla of evidence upon this point, nor in line on another, or an absolute failure to prove on another point, that it is useless to attempt by argument to refute these statements. We have, therefore, set forth extracts from the testimony of the shipper witnesses, both for the applicant and the protestants. and a casual reading of this testimony, explodes practically all of the claims of protestants.

Protestants claim that applicant thinks the mere fact that it is a subsidiary of the railroad automatically entitles it to a certificate without any showing of any kind whatsoever. This has not been our position. We submit that we have met all of the elements of proof in this case and are, therefore, entitled to a certificate.

There are the charges of the Railroad boasting and the applicant's witnesses getting angry at the thunderous cross-examination of protestants. It is the opinion of applicant that the anger and boasting was not done by applicant's witnesses. At one place in the exceptions, protestants claim that the time has arrived for a show-down, apparently feeling that something drastic is about

On page 15 of the exceptions, comment was made by protestants that their witness Duncan testified at great length concerning the lack of business both inbound and outbound at the very small points the Railroad contends it wants the applicant to serve. Again at page 15 the statement is made to the effect that the testimony of this witness Duncan on that point is of great/importance, because it demonstrates that there is not enough service to justify the present truck operations over these routes, let alone warrant the imposition of a new line in that field. Our pages 21 and 22 there is the statement that "as the transcript shows and as our brief points out, we presented testimony, that was not even attacked, going to show that the tonnage moving to and from these points is so small as not to warrant the continuation of all this motor carrier service, let alone the addition of a competing carrier." Again at page 86, under protestants' point 10, is the claim "i' is shown that the tonnage to and from the small points involved is not sufficient to justify the present available motor carrier service and that the entry of another carrier would further complicate the situation."

These are admissions upon the part of the protestants that they do not have sufficient business of less than truckload freight to be of any consequence; and therefore they cannot be damaged if they were even to lose it all. On the other hand, the uncontradicted evidence of applicant was to the effect that they have hundreds of thousands of pounds of freight moving over these various routes in definite regularity. The exhibits introduced in the evidence specifically set forth the exact tonnage on each route. A casual examination of these exhibits of this tonnage shows that . The Pennsylvania Railroad does have sufficient business to turn over to the applicant for the successful operation of these routes in daily service, and the mere fact that protestants have no business is beside the issue. The Pennsylvania Railroad has the business to turn over to the applicant and desires to do so that it will be done economically, expeditiously, and efficiently. The regular schedules of the protestants are out of line with those needed by the railroad. Therefore, it would fequire new schedales and new equipment to be placed on the highways by the protestants if they were to be given the business. We are not going to repeat here the many umassailable reasons why The Pennsylvania Railroad can use the applicant to better advantage than these several competing independent motor carriers, none of whom could cover the operations in their entirety.

Duplicate Service

Protestants argue at length and in many places that the applicant proposes to render a duplicate service in this that The Pennsylvania Railroad does not intend to take the way car off of the local freight train, but that it desires to continue to operate the way car on the local freight train and for the applicant to operate the motor vehicles over the truck routes in addition. These objections are pure figments of imagination. The positive testimony of the applicant's witnesses was to the effect that one of the main purposes in securing the application was for the

purpose of taking the way cars off of the local trains.

. Under Ex Parte 129, the procedure was set up whereby the substituted service of this type and kind could be rendered by motor carriers on behalf of railroads. Kipp's National Substituted Freight Service Directory, as the Commission judicially knows and as is shown by the evidence, modifies the tariff of The Pennsylvania Railroad to the extent of advising the public that the railroad reserves the right to transport this freight in whole or in part under its bills of lading over the routes of the respective motor carriers as set forth in this directory. Under Ex Parte 129, there is the limitation which was suggested and which has been carried over into Kipp's Directory to the effect that the shipper has the right to ask that the shipment be made by rail in its entirety. It is only in such a contingency that it would be necessary for the railroad to carry any less than carload freight onany of the local freight trains referred to. This matter was thoroughly explained on the witness stand by applicant's witness, Mr. Christie. No issue was made of this proposition at the hearing. and if it had been, Mr. Christie would have explained definitely and in detail that no such request had ever been made upon the part of the railroad in any of its operations and he would have explained, if he had been asked by protestants; exactly how the matter would have been handled. In any event, the rare post bility of the movement of a small amount of l. c. l. freight by rail. does not justify the claims of protestants that the railroad does not intend to take the way car off of its local freight trains, and that it intends to operate a duplicated service. What applies to The Pennsylvania Railroad in all of its substitution truck service equally applies to practically all of the railroads, as they are parties to the same Directory.

Complaint is also made that The Pennsylvania Railroad seeks to reduce the wages of its employees and to reduce the number of working hours, with the inference that there is something detrimental in such procedure. The facts are, as testified to by Mr. Christie, that it is the desire of the railroad as one of its economies, to cut down the time of the operation of the local freight trains, which in turn will cut down the overtime of railroad employees. Anyone who understands the operation of a

railroad knows that this will not cut down the regular pay of the employees. It is only in line with the declared public policy of Congress as expressed in the various laws covering the subject, that employees should not be worked overtime. Therefore, penalties are placed in wages for overtime, / These objections, therefore, are baseless.

Protestants complain that they were denied the issuance of a subpoena duces tecum during the interval between the two hearings and that The Pennsylvania Railroad should have been compelled to prepare certain figures for them. The Examiner was correct in his rulings in these instances, which are in line with the rules of the Commission. A number of exhibits, including a large amount of pertinent figures and material, were introduced in the evidence by applicant. Nothing of this type or kind was introduced by the protestants showing their operations.

Protestants insisted upon a showing being made upon the part of the protestants in exhibit form, or furnishing them with exhibits showing the amount of tonnage moving to and from the various intermediate points. Our exhibits along this line showed the tonnage moving over the routes, which, in our judgment,

is sufficient for all practical purposes.

We have referred to schedules hereinbefore. Protestants lose sight of the fact that the object of the institution of the proposed rail truck service is to coordinate and supplement the service of The Pennsylvania Railroad and not to coordinate and supplement the service of the independent truck lines. This is a basic part of the applicant's case, which was never understood by the prot-

estants or deliberately disregarded by them.

Complaint is made that shipper witnesses of the applicant did not understand the minute operations of the railroad trains and truck schedules to be instituted by the applicant. How could they! Why should they! . It is only under rare circumstances that the individual knows the operation of a railroad or of a truckline as to how the various trains or trucks move. It will be recalled that each and every one of the shipper witnesses for applicant had explained to him what the service would be, and how the movement of the freight would be expedited, and with that assumption the witnesses were asked whether or not that service would serve the convenience and necessity of their respective businesses, and every one of them stated that it would. and in addition practically every one of protestant's shipper witnesses, after much prodding, were compelled to admit that such expedited service upon the part of applicant would serve the convenience and necessity of their respective businesses and would be of benefit and use to them in their respective businesses.

Yet time after time the claim is made by protestants that such is not the case. We again refer to the extracts of the evidence set forth herein.

Protestants, on page 3 of their exceptions, reveal their complete lack of understanding of this type of case when they say, "The next reason the Commission recites is that the railroad would have to make arrangements with more than one protesting motor carrier. What of it? The only question before the Commission is whether or not the service is available—not whether it is available by one or a dozen carriers," and then proceeds to say, "such nonsense has never prevailed and never will where an ordinary motor carrier is involved."

This is another example of the lack of understanding upon the part of protestants of the underlying principal set forth in the various decisions.

In spite of many protestations, protestants at no place in the evidence offered any plan or any suggested plan of cooperation or coordination with that of The Pennsylvania Railroad. Their evidence was conclusive that their present operations are completely disjointed as far as The Pennsylvania Railroad train services are concerned, and their operations do not fit into the needs of The Pennsylvania Railroad at all. The mere statement on their part to the contrary does not supply evidence to that effect.

War Times

Protestants complain that these are war times and the conservation of effort and elimination of duplication is now the order of the day and charge that the railroad proposes to reverse the trend. These accusations are not in line with the testimony. The applicant is seeking not a war-time certificate, but a permanent certificate. The Pennsylvania Railroad, as is shown by the evidence, has the tomage now moving over its railroad to turn over to the applicant in peace time or in war time in sufficient volume to carry on a successful operation as sought in the application.

We have already commented on the effort of protestants to impeach some of the shipper witnesses who had testified by stipulation at the hearing at Indianapolis two months before the Lansing Michigan, hearing. No valid offer of proof was made, nor any attempt to track the law as far as impeachment was concerned.

L. T. L. Freight.

Protestants object to the report and recommended order of the Examiner on the grounds that there was no restriction to less than truckload freight to be handled by applicant in the event a

certificate should be issued. We have already replied to this in another place herein. Protestants use the term "less than carload freight" and "less than truckload freight" interchangeably. These terms are not synonymous. The evidence of applicant is such that there can be no doubt that the only service which it is seeking to render is that covering less than carload freight and that no carload freight is to be handled by the applicant. It was explained by applicant's company witnesses that this is the same type of service in force over all of the 25 routes now in operation. There is sufficient recital of this proposition in the evidence, in the Examiner's report, and in the other orders heretofore issued by the Commission to adequately cover this point.

The charge is made that by reason of the fact that seven routes are sought that therefore it represents a tremendous "grab" of authority and business sought by the applicant. Protestants seem to think that the mere size of the request seems to be one of the applicant's chief grounds for seeking the authority, and then seems to think that it has not had ample opportunity to express itself in its briefs and exceptions and desires oral argument to

reitterate.

Much is said regarding the desire for a rehearing. No ground has been set forth as to why a hearing should be granted. The protestants have had every opportunity in the world to present their case. When the case first came up at Indianapolis after the applicant had finished its case, the profestants were not prepared to introduce their evidence. They then had several months' time in which to analyze the transcript of applicant's testimony and in which to prepare their case for presentation at Lansing, Michigan, and now they want, a rehearing, or an additional hearing. We submit there has been sufficient delay in this case so far and that this matter should be brought to a conclusion. We believe the report and recommended order of the Examiner is correct and should be sustained at an early moment so that this service can be placed in operation over the seven routes in question without further delay. No reason for a rehearing has been stated. Reasons required under the rules have not been stated. Mere desire is not enough.

We have hereinbefore referred to the request for oral argument by protestants and we find no adequate reasons set forth therein. The Commission has set forth and defined the rules governing this point. At the hearing and in the briefs and exceptions, protestants have thundered away at and criticized bitterly the fundamental rules and decisions laid down by the Commission governing this class of cases, but just because protestants do not agree with the long line of decisions does not furnish sufficient reason for them having opportunity for further delay and further argument. We can see no good that can come from such delays. Protestants are represented by capable counsel who have painstakingly prepared briefs and exceptions herein. Certainly all that could be done at an oral argument would be to repeat and place emphasis upon the arguments already made. It is inconceivable that any more emphasis could be made than has already been made. There is no disposition upon the part of counsel for applicant to object to oral argument if the Commission feels that under the circumstances it is necessary. We are only objecting in the interest of time, and do not believe that the request comes within the rules of the Commission, particularly as there is no new or novel question involved.

Convenience and Necessity

We cannot close this reply without discussing under a specific heading the question of convenience and necessity. This has been covered under other headings in this reply, particularly wherein we discussed public need and public interest. However, before closing we desire to call attention to pertine t statements in a few decisions.

We have hereinbefore replied to the claims of protestants that convenience and necessity can only be had in a case of this type the same as if the application were by an ordinary motor carrier seeking an entirely new independent motor carrier's business. This of course is not the law. Whereas in the instant case the railroad is only seeking to improve a present existing service by substitution of trucks for way-car service.

Convenience and necessity in this type of cases is determined on an entirely different basis than protestants assert.

As was said in the Dixie Ohio Express Company, extension of operations, 30 M. C. C. 291, at page 295, by the Commission:

"In our opinion public convenience and necessity in a proper case may be found in operating economy, and those things which contribute to expedition, lafety, and efficiency in operation, all of which though they benefit first the carrier indirectly contribute to public safety and more reliable, more expeditions and cheaper transportation. Given a proper showing of these things a finding of public convenience and necessity is justified."

This covers this type of case in a nutshell. In the instant case this element of evidence has been amply shown. We have shown operating economy; we have shown that the service will be expedited; that the service to each and every one of the cities and towns on The Pennsylvania Railroad over the seven routes involved will have the freight expedited from 24 to 72 hours, depending upon the particular circumstances as testified to in detail;

we have shown the efficiency of the operation. Complaint is made by protestants that the benefits to the railroad are not evidence of benefits to the public, but in this decision it is said:

"All of which though they benefit first the carrier, indirectly contribute to the public safety and more reliable, more expeditious

and cheaper transportation."

Our case has an abundance of evidence along these lines and therefore convenience and necessity has been established.

In Seaboard Air Line Railway Company, extension, 21 M. C. C.

773; at page 775, Division 5 said:

"While it may be true that in those instances there is adequate motor carrier service now available, it is clear that the applicant's proposed service will expedite deliveries of less than carload shipments which now move by rail with some operating economy. Several cases upon a similar set of facts we have granted appropriate operating authority (citing authority)."

And continuing on the same page, Division 5 said:

"There seems to be little question that the proposed rail-truck

coordinated service is in the public interest."

The Pennsylvania Railroad has the freight and is now moving it. It is not required to show convenience and necessity in moving it. It has the legal duty to continue rendering it. It is its obligation to transport it and to continue to transport it.

In Kansas City Southern Transport Company, Inc., 28 M. C. C. 5, at page 9 this obligation was discussed and the Commission

said:

"The traffic under consideration would be chiefly so-called package or merchandise freight, less than carload quantiles is of course, traffic which the railroads are and have been under an obligation to transport and which they will continue to transport whether we grant or deny the application. So far as such traffic can be moved in well loaded cars on through trains which serve only the larger points, it can be handled more efficiently by rail. The railroads have no need for substituted truck service for such rail service. The way freight train service which is used in serving the smaller stations , however, uneconomical and inefficient and trucks can be used in substitution therefor to much advantage both to the railfoads and to the public served. Division 5 found in 10 M. C. C. 221 and we agree that reduction in the cost and increase in the efficiency of transportation service inures to the benefit of the general public and are required by public convenience and necessity."

In J. H. Axley, extension of operations, 30 M. C. C. 387, at page

389. Division 5 said:

"We do not believe that we are precluded from finding that the public convenience and necessity require an operation of the character here proposed simply because of the absence of direct evidence showing a public need or desire for the service proposed. Under the terms of the Act we are charged with the responsibility of promoting safe, adequate, economical and efficient service, and in our opinion public convenience and necessity in the proper case may be found in operating economies and in those things which contribute to expedition, safety and efficiency of operation, all of which though they benefit first the carrier indirectly contribute to public safety, and the more reliable, more expeditious and cheaper transportation."

Yet in spite of all of these decisions of the Commission protestants still contend that this is not the law, and that they are

entitled to a "showdown."

We believe that we have presented our case at all times in line with the decisions of the Commission. Because applicant cited these various decisions at the hearings and relied upon them, we were charged with being boasters, with feeling that we already had the decision in hand and decided by the Commission in advance. The evidence presented by applicant in this case is in line with the evidence presented by it under its other applications covering its 25 routes and in line with the evidence presented by applicants in each and all of the other rail struck carrier cases, and we believe it conclusive and justifies the Commission in affirming the Examiner's report, and recommended order and granting a certificate of convenience and necessity to applicant.

Jurisdiction

In our brief we cited some of the authorities going to the proposition of jurisdiction, which hold that the commission is without jurisdiction to compel coordinated service between carriers by rail and carriers by motor vehicle, and that such could only be accomplished through voluntary cooperation. We do not believe that this matter need be gone into at length as the proposition is not assailed by protestants with any citation of authority.

. In The Willett Company of Indiana, Inc., extension of operations, Illinois, Indiana and Kentucky, 21 M. C. C. 405, at page

409, Division 5 said:

"It addition we are without jurisdiction to compel coordinated service between carriers by rail and carriers by motor vehicle. It could only be accomplished through the medium of through routes and joint rates, and we have no power to require their establishment. It follows that any such plan must be dependent on voluntary cooperation."

The same objections were made in that case by protestants, but Division 5 right fully stated the law, that there was no jurisdiction.

In Rock Island Motor Transit Company, common carrier appli-

cation, 21 M. C. C. 513, at page 518, Division 5 said :

"We are without jurisdiction to compel coordinated service between carriers by rail and carriers by motor vehicle. It could only be accomplished through the medium of through routes and joint rates, and we have no power to require their establishment. It follows that any such plan must be dependent upon voluntary cooperation."

There are many other cases to the same effect; the same thing was held in Kansas City Southern Transport Company, Inc., 10

M. C. C. 221 (235-236).

In Louisiana, Arkansas & Texas Railway Company, 22 M. C. C. 213 (216). The same language as hereinbefore set forth was

given identically and then was added the following:

"In view of the close adjustment of schedules and interchange arrangements which good dependable service require, as well-as the joint use of facilities, we believe the railway has sound grounds for its contention."

See also Gulf, Mobile & Northern Railroad Company, Common Carrier application, 18 M. C. C. 721 (725-726), wherein Division 5 held and elaborated on the same proposition that the Commission is without jurisdiction.

Therefore, it is conclusive that the Commission has no such

jurisdiction.

VII. Reply to Exceptions Filed By Norwalk Truck Line Company, Norwalk Truck Line Company of Indiana, Inc., Days Transfer, Inc., O. I. M. Transit Corporation, Wolverine Express, Inc.

All references in this reply hereinbefore have been directed to the exceptions filed by Interstate Motor Freight System and Parker Motor Freight, but generally speaking applied to all.

All of the exceptions claimed by the other protestants are contained in the first set of exceptions and have heretofore been replied to. Therefore, there will be no specific reply made to the exceptions enumerated in the last heading.

VII. Conclusion

Wherefore, Applicant respectfully says that each and all of the exceptions claimed by protestants are unfounded and without merit and should, therefore, be overruled. Applicant respectfully prays that its application be granted in its entirety, that a cer-

tificate of convenience and necessity as prayed for, be granted to it.

Respectfully submitted.

THE WILLETT COMPANY OF INDIANA, INC.,
By HARRY E. YOCKEY, Its Attorney.

EARL W. MUNSHAW, KIRKWOOD YOCKEY, Of Counsel.

Dated December 16, 1942. 1250 Consolidated Building, Indianapolis, Ind.

Certificate of Service

I hereby certify that I have this day served the foregoing document upon all parties of record by mailing by first class mail a copy thereof, properly addressed, to all parties.

Dated at Indianapolis, Indiana, this 16th day of December

1942.

HARRY E. YOCKEY, Attorney for Applicant.

1178 Before the Interstate Commerce Commission

Docket No. MC-2815-Sub No. 6

THE WILLETT COMPANY OF INDIANA, INC. EXTENSION—FORT WAYNE, INDIANA—MACKINAW CITY, MICHIGAN

Reply to Exceptions

Dec. 17, 1942

May It Please the Commission:

This Repty is filed on behalf of The Pennsylvania Railroad Company, a corporation, as Intervener in support of the within application of The Willett Company of Indiana, Inc., in reply to the Exceptions filed by the Protestants: (1) Days Transfer, Inc., O. I. M. Transit Corporation and Wolverine Express, Inc.; (2) Norwalk Truck Line Company and Norwalk Truck Line Company, of Indiana, Inc.; and (3) Inter-State Motor Freight System, and Parker Motor Freight, to the Report and Order recommended by Examiner Walter W. Bryan, served September 14, 1942.

I

In the Exceptions of Days Transfer, Inc., I.M. Transit Corporation and Wolverine Express, Inc., the following language is

quoted from pages 3 and 14:

"That public convenience and necessity require the proposed operation but that operations conducted thereunder shall be limited to the transportation of freight having a prior or subsequent

movement by rail."

The Intervener, in answer to this alternative suggested finding of said protestants, contends that that portion which reads "having a prior or subsequent movement by rail" be eliminated. This alternative suggestion on behalf of counsel for said protestants appears to be a candid and frank statement, which shows that there is evidence of record to substantiate a finding such as was made by the Examiner in the recommended report and order under consideration in the within application.

The evidence offered on behalf of the applicant and intervener fully discloses a definite manner and method of proposed motortruck operation and the need of this supplemental and auxiliary

service by motor truck.

The evidence shows that certain peddler or way freight service cars will be eliminated in what is commonly called station-to-station service and a box car-saving effected. This evidence has not been disputed and stands uncontradicted.

The following excerpt is quoted from pages 13-14 of said

Exceptions:

"If the service proposed herein is desired by applicant and intervenor to be purely supplementary to, or auxiliary to, the existing rail service, the authority might be granted with the 'prior or subsequent movement by rail' restriction without too seriously affecting the interests of common carriers by motor vehicle serving the territory involved. Such a restriction would insure the new operation as being, in truth and in fact, supplementary to, or auxiliary to, existing rail service and would not be objectionable to protestants represented by us."

We submit that the conditions now contained in the Recommended Report and Order should suffice. Similar conditions were made a part of the Order in a Report served May 13, 1941 in the application of The Willett Company of Indiana, Inc., Subs. 3, 4, and 5, as are contained in the Sub. 6 Recommended Report of

Examiner Bryan.

TI

A reply to the Exceptions of Norwalk Truck Line Company and Norwalk Truck Line Company of Indiana, Inc. will be found in the discussion under section-III.

III

A

A great portion of the Exceptions of Interstate Motor Freight. System and Parker Motor Freight is devoted to an attack on the findings of the Commission in the decision of Kansas City Southern Transport Co. case.

We believe that references to decisions in other similar cases fully answer the contentions now raised by said protestants.

The numerous reports of Division 5, in which railroads were granted authority to conduct motor vehicle operations similar to: those here involved, were decided prior to the Commission's decision in the Kansas City Southern case. And since that case was decided, further precedent has grown up to support the granting of this application. In its decision of August 22, 1941 in MC-42615 (Sub-No. 5), Chicago and North Western Railway Company (Charles M. Thomson, Trustee) Extension South Dakota, Division 5 granted the Chicago and North Western Railway Company authority to conduct similar operations between points on its lines in South Dakota and Nebraska. In MC-86779 (Sub-No. 3), Illinois Central Railroad Company Extension of Operations-Illinois, it has been granted authority to conduct motor vehicle operations along fourteen routes paralleling its; lines in north-central Illinois. And by a decision dated September 8. 1941, in MC-86779 (Sub-No. 1), Illinois Central Railroad Company-Kentucky-Tennessee Extension, Division 5 granted the Illinois Central the right to conduct the same type of motor vehicle operations along seven routes paralleling its lines in Kentucky and Tennessee.

We ask the Commission to find in this case, on the basis of the detailed showing we have made at the hearing herein, a showing which was discussed in detail in the brief of applicant of August 21, 1942, to which reference is here made, that applicant is entitled to anthority to conduct the operations covered by this application.

From the application of Indiana Railroad (Bowman Elder, Receiver) Extension of Operations—Fort Wayne via Muncie, No. MC-48645 (Sub-No. 6), reported in 27 M. C. C. 176, the following language is quoted as appearing to be analogous to the situation which presents itself in the instant case:

"Similarly, for the reasons stated at length by division 5 in the report in that case, we believe that applicant should be permitted to substitute motor-carrier services for its present rail service and thereby continue to handle the traffic of shippers it has served for long periods of time. Applicant's retention of its present traffic

admittedly can have no effect on existing motor carriers between the same points, and any future diversion of traffic either to applicant or from applicant to other carriers will be influenced by the best service available to the shippers. Under such circumstances it cannot be said that competition fostering such improved service is detrimental to the public interest."

R

This Commission, as Well as Various State Commissions, Has Eucouraged and Recomended the Adoption and Use by the Railroads of Coordinated Rail-Truck Service

As long ago as April 10, 1928, over twelve years ago, the Commission declared that railroads should be authorized to operate motor vehicles on public highways. In Motor Bus and Motor Truck Operations, 140 I. C. C. 685, 745, the Commission said:

"Railroads, whether steam or electric * * *, subject to the interstate commerce act, should be authorized to engage in interstate commerce by motor vehicles on the public highways, * * *."
In Coordination of Motor Transportation, 182 I. C. C. 263, 375.

the Commission said:

"The railroads have undertaken to test the possibilities of trucks and other new facilities for use in conjunction with rail service; their use of trucks in substitution for train service in areas of light traffic has been uniformly beneficial in reducing costs and improving service; * *."

The first two findings of the Commission in that report (182 I.C. C. 263, 379) are as follows:

"Upon consideration we conclude:

1. That transportation by motor vehicles, busses and trucks, over the public highway is, within certain distances, and in certain respects a superior service, and that the rail * * * lines should be encouraged in the use of this instrumentality of commerce wherever such use will promote more efficient operation or improve the public service;

2. That there is substantial competition between rail and water carriers, on the one hand, and motor carriers on the other for the transportation of both passengers and freight and that this com-

petition is increasing: * * *.

In its 46th Annual Report, dated December 1, 1932, the Com-

mission said, at page 21:

"In our judgment there is great opportunity for the advantageous use of motor trucks and busses to supplement or in substitution for railroad service, and we welcome the numerous experiments which are being made in this direction."

In its 52nd Annual Report, dated November 1, 1938, the Commission said, at page 13:

"Many railroads are using trucks in lieu of local way-freight

service with much advantage."

And in Great Northern Railway Co. Common Carrier Applica-

tion, 1 M. C.C. 73, 76, the Commission said:

"We are of opinion that the substitution of motor service over the highways for local service over the rails * * * is distinctly in the public interest."

From the Kansas City Southern Transport Co., Inc., 28 M. C. C.

5, the following is quoted:

"It was further found, and properly we think, that the development of the coordinated service would not seriously endanger the operations of existing motor carriers, but that, in any event, the public ought not to be deprived of the benefit of an improved service merely because it might divert some traffic from other carriers, pointing out that had that principle been followed no motor-carrier service could have been developed."

(

From an examination of Exhibit No. 20 introduced on behalf of the Interstate Motor Freight System, it appears that there is no intermediate point served by the Interstate between Fort Wayne, Indiana, and Sturgis, Michigan, a distnce of approximately fifty-seven miles.

It is further noted that no point is listed on Exhibit 20 showing any daily direct service to any point of The Pennsylvania Railroad Company north of Cadillae, Michigan, to the northern point

of the Grand Rapids Branch at Mackinaw City.

No points are shown on the Branch between Cadillac and Travserse City or any intermediate points between Grand Rapids and Muskegon Heights, and no points on the Branch between Petoskey and Harbor Springs.

From the application of Chicago, Rock Island & Pacine Railway Company reported in 19 M. C. C. 702, the following is quoted

from pages 703-704:

"Since 1930 applicant has lost a substantial amount of less-than-carload traffic to competing motor carriers in the considered territory. For example, tonnage moving from or to points on its Horton-Fairbury branch line decreased from 10,000,000 pounds in 1930 to 4,000,000 pounds in 1937. This decline is attributed principally to the superior service of motor carriers and the growing inadequacy of rail service in the face of changing methods of merchandising. After long study applicant has concluded that

it must engage in motor-carrier operations in order to retain its present less-than-carload traffic and to furnish satisfactory and

comprehensive service to the public.

"Applicant proposes to use motor-vehicle transportation as a substitute for its less-than-carload rail service and as auxiliary to, and supplemental of, its rail operations. Local freight trains would not be eliminated but would continue to handle carload. business. Motor vehicles would transport less-than-carload shipments between applicant's railway stations in line-haul service. Collection and delivery service would not be performed by the line-haul trucks but would be provided by local draymen as at Operations would be conducted over regular routes generally paralleling applicant's rail lines. As stated, applicant desires to serve only those intermediate and off-route points which are stations on its rail lines; excluding Corydon and Ottumwa. Its facilities, agents, and other personnel would be utilized as . fully as possible in the proposed service. The motor-vehicle traffic would consist principally of less-than-carload package freight and would move under rates on the same level as those applicable on rail traffic. Motor and rail schedules would be coordinated so that traffic could move by rail to break-bulk points, and thence be distributed by truck to the smaller way stations. Shipments between way stations on each motor route would move entirely by truck, and those between break-bulk points would move by truck or rail, whichever is more expeditious.

"Applicant pointed out various benefits that would accrue to its . rail operations and to the public from the proposed service. Itspresent schedules of local freight trains are uncertain, owing to the variable times spent at way stations in loading, unloading, and switching cars. The use of motor vehicles would relieve local freight trains of less-than-carload shipments, permitting them to eliminate stops and reduce the time spent at way stations. These trains would be speeded up, overtime wages would be saved, and carload business would be expedited. The public also would be afforded more frequent and convenient schedules by truck, and shipments would be accepted later at points of origin and delivered earlier at points of destination. The existing traffic between the considered points is insufficient to warrant additional rail service but is sufficient to support the proposed motor-vehicle service. It also is claimed that motortrucks would be able to handle the available traffic in a much more economical

and efficient manner than local freight trains.".

From the case of Chicago and North Western Railway Company v. The Buckingham Transportation Company of Colorado, et al., reported in 5 N. W. (2d) 729 (Advance sheet November 4,

1942), the Supreme Court of the State of South Dakota, the fol-

lowing is quoted from page 736 of said decision:

"We now hold that the commission, in the exercise of its discretion, may consider whether a proposed service will promote the public interest by strengthening and preserving as indispensable transportation service. That there was basis in the circumstances established by the evidence for a rational conclusion that purely incidental movement of l. c. l. freight between stations by truck would not only improve the character of applicant's railroad services to the public, but would also add vitality to a failing indispensable transportation service, we are convinced.

"The remaining contention of protestants finds answer in the matters we have just considered. The principle that, all things being Qual, the commission would act unreasonably in failing to grant a motor carrier agency operating in the territory first opportunity to provide needed additional motor carrier service may be assumed. The principle can have no application if the established circumstances make room for the commission to conclude that the public interest will best be served by a different course. The private interests of the carrier must be subordinated to the public interest. That we deem the evidence sufficient to warrant an inference by the commission that the public interest would be served by permitting the applicant to carry on some incidental truck movements of freight between its stations as a part of its railroad operations, has been made sufficiently clear."

While there were other questions before the Court involving intrastate rights, that portion of the decision hereinabove referred to and quoted is applicable to the application under consideration and shows the trend of opinion of state courts where intrastate rights are involved, and the substitution of motortruck service for railroad service for the transportation of less-than-carload

shipments.

From the Application of Louisiana, Arkansas and Texas Railway Company, reported in 22 M. C. C. 213, the following is quoted

from pages 215-217:

The Railway points out that it and its predecessors in interest bave served the considered territory for approximately 50 years; that the parties do not seek to invade any new territory, nor do they contemplate the addition of another competing transportation agency in the territory; that no service will be afforded any point not served by the Railway; and that the authority requested involves a mere change in the type of vehicle used in the transportation of less-than-carload traffic now moving by rail.

"The Railway is now furnishing a less-than-carload or merchandise freight service which is expensive and in many respects unsatisfactory and inefficient. For example, under the proposed service, freight from Shreveport and Dallas to other points on the Railway will be delivered from 1 to 2 days earlier than under the all-rail service, and the proposed service will result in an estimated saving in out-of-pocket cost of \$43,000 per annum. A number of shippers testified in support of the application. They point out that the rail service is too slow and that a great improvement would result from the proposed operations, which would be a benefit to them and their businesses. For the most part, these witnesses were unfamiliar with the existing motor-carrier service, or did not avail themselves of such service, preferring for personal or business reasons to utilize rail service.

The coordinated rail-truck service differs from the service given by the Railway alone, or by competing motor carriers alone. It is a new form of service, utilizing both rail and motor-vehicle transportation to advantage and in such a way as to render a merchandise service which is much less expensive and at the same time more expeditious and more convenient and generally satisfactory to the public served. That these results can be achieved.

the record leaves no doubt.

"While there are a number of motor carriers operating in the considered territory, the Railway contends that any such plan of coordination through the utilization of their service would be impracticable. Only one of the protestants is shown to operate between Shreveport and Dallas. This carrier operates over the proposed route between Jefferson and Dallas, but it does not servenor it it shown that all of the protestants collectively serve—all of the points involved. In order to establish the coordinated service through the cooperation of these motor carriers, it would be : necessary, therefore, for the Railway to make arrangements not with one, but with several, each performing a more or less disjointed part of the entire service, and it would be necessary for . them to secure authority to serve rail points which they do not now serve. Moreover, most if not all serve points, and often important points, not served by the Railway. They would find it difficult to adjust their schedules to meet the needs of the coordination with the rail service without disrupting or impairing their service to the off-rail points. * * * Furthermore, we are · without jurisdiction to compel coordinated service between carriers by rail and carriers by motor vehicle. It could only be accomplished through the medium of through routes and joint rates, and we have no power to require their establishment. It follows that any such plan must be dependent on voluntary cooperation. In view of the close adjustment of schedules and interchange arrangements which good dependable service requires, as well as the

joint use of facilities, we believe the Railway has sound ground for its contention.

"We are of the opinion that the proposed coordinated service here in question would serve a useful public purpose responsive to a public demand or need; that such service through voluntary cooperation of all or some of the protesting motor carriers is not here practicable; and that the useful public purpose which the proposed operations will serve cannot be served as well by other existing lines or carriers."

The Commission Has Repeatedly Sanctioned Plans for Coordinated Rail-Truck Service Such as the Applicant Proposes to Institute

The instant case is also identical in every material respect with a large number of other cases wherein the Commission has authorized railroad companies to substitute service by motor vehicle for

slow local freight train service.

There are two ways in which railroads may achieve a substitution of motor vehicle service for local freight train service. One is by acquiring control of a motor carrier under the provisions of section 213 of part I of the Act, and the other is by securing under section 206 of the Act a certificate in the name of the railroad company or a subsidiary company to conduct the motor carrier operation in question. Railroads have employed both of these methods and the Commission has repeatedly held that the desired substitution of motor vehicle service for local freight train service should be approved.

The type of trucking operations which the Commission has approved railroads incorporating into the fabric of their rail operations was defined in Pennsylvania Truck Lines, Inc.—Control—

Barker, 5 M. C. C. 9, 12, as follows:

"Approved operations are best illustrated by the substitution of trucks for peddler or way-freight service in what is commonly called 'station-to-station' service."

This was restated by Commissioner Caskie in his concurring opinion in Texas & Pacific Motor Transport Co.—Purchase—

Johnson, 5 M. C. C. 89, 93, as follows:

"The illustration of operations which are auxiliary or supplementary to train service given in the cited case (Pennsylvania Truck Lines, Inc.—Control—Barker, 1 M. C. C. 101, 5 M. C. C. 9 and 49) is that of the substitution of trucks for peddler or way-freight service in what is commonly called 'station-to-station' service. These are operations such as are performed primarily for the controlling railroad with a view to enabling it to achieve greater efficiency and economy in the conduct of its basiness as a railroad."

The operations that the Commission has approved and which it has said are to be encouraged are thus seen to be exactly what the IC and Y&MV are here seeking authority to conduct.

Typical cases wherein railroads or their subsidiaries have been authorized to acquire control of independent truck operations under section 213 can be found in Volumes 1, 5, 15, 25 and 35 of

the Commission's Motor Carrier Reports.

And in many cases which are on all fours with the instant case, the Commission has authorized the tying up of motor carrier operations with rail operations by granting the railroad company itself, or one of its subsidiaries, a certificate in its own right to operate vehicles as a common carrier by motor vehicle. The following railroads have been given certificates to operate motor vehicles in the same manner as the applicants are here seeking to operate them, namely, by the granting of a certificate under section 206 of the Act:

Kansas City Southern Railway: Kansas City Southern Transport Co. Inc., Common Carrier Application, 10 M. C. C. 221; also decision by entire Commission on oral argument and reconsidera-

tion, dated January 24, 1941, 28 M. C. C. 5.

Illinois Central Railroad: Illinois Central Railroad Company Common Carrier Application, 12 M. C. C. 485; also Extension

Sub-2, Report of Division 5, Sept. 29, 1942.

Texas & Pacific Railway: Texas & Pacific Motor Transport Co. Common Carrier Application—Louisiana, 10 M. C. C. 525. Texas & Facific Motor Transport Co. Common Carrier Application, 12 M. C. C. 37. Texas & Pacific Motor Transport Co. Extension—Wills Point, Texas, 14 M. C. C. 645. Texas & Pacific Motor Transport Co. Extension—Big Spring—Pecos, Texas, 14 M. C. C. 649. Texas & Pacific Motor Transport Co. Extension—Marshall, Texas, 20 M. C. C. 593.

Gulf, Mobile and Northern Railroad: Gulf, Mobile & Northern

Railroad Co. Common Carrier Application, 18 M. C. C. 721.

Seaboard Air Line Railway: Seaboard Air Line Railway Co. Motor Operations—Caston-Garnett, S. C., 17 M. C. C. 413; also decision by entire Commission on oral argument and reconsideration, dated January 24, 1941. Seaboard Air Line Railway Co., Tampa Extension, 21 M. C. C. 773.

Missouri Pacific Railroad: Missouri Pacific Railroad Company Extension of Operations—Illinois, 19 M. C. C. 605. Missouri Pacific Railroad Company Extension—Arkansas-Louisana, 20 M. C. C. 563. Missouri Pacific Railroad Company Common Carrier

Application, 22 M. C. C. 321.

Great Northern Railway: Great Northern Ry. Co. Common Carrier Application, 1 M. C. C. 73. Great Northern Railway Co. Extension-Hobson-Lewiston, 19 M. C. C. 745.

Chicago, Rock Island & Pacific Railway: Chicago, R. I. & P. Ry. Co. Ext.—Iowa, Mo., Kans. and Nebr., 19 M. C. C. 702; also decision by entire Commission on oral argument and reconsideration, dated January 24, 1941. Rock Island Motor Transit Co. Common Carrier Application, 21 M. C. C. 513.

Indiana Railroad: Indiana Railroad Extension-Ft. Wayne, 21

M. C. C. 73.

Louisiana, Arkansas & Texas Railway: Land Motor Lines Contract Carrier Application, 22 M. C. C. 213; also decision by entire Commission on oral argument and reconsideration, dated January 24, 1941.

Louisville and Nashville Railroad: Louisville and Nashville Railroad Company Common Carrier Application, docket MC-

89811, decided by entire Commission January 24, 1941.

Chicago, Milwaukee, St. Paul & Pacific Railroad Company: Extension of Operations—Wisconsin and Michigan, 34 M. C. C. 475 (a petition for reconsideration was denied. Certificate was issued to applicant Dec. 10, 1942).

Each case contains so much that could be quoted in support of this application, that we hesitate to do more than merely refer to the cases.

See also the following cases:

Chicago & North Western Railway Company (Chas. M. Thomson, Trustee), Extension—Iowa, M. C. 42614, Sub. No. 6 (mimeographed), December 16, 1941.

Chicago & North Western Railway Company (Chas. M. Thomson, Trustee), Extension of Operations, South Dakota, 30 M. C.C.

379.

Chicago, Rock Island & Pacific Ry. Co., Extension—Iowa, Missouri, Kansas and Nebraska, 30 M. C. C. 621.

Kansas City Southern Transport Co., Inc., Common Carrier Application, 10 M. C. C. 221; 28 M. C. C. 5.

Northern Pacific Transport Co., Extension—Yakima-Prosser, 30 M. C. C. 58.

Willett Company of Indiana, Inc., Extension of Operations; Illinois, Indiana, and Kentucky, 21 M. C. C. 405.

There is no evidence in the written record for consideration of the suggested findings at conclusion of points 1 to 12 of Exceptions. We submit that each and every one should be denied.

While we realize that each case must stand or fall on its own facts, the record in this case is fully as conclusive as in the case just cited that the granting of these applications will enable The Pennsylvania Railroad Company to use service by motor-vehicle to public advantage in their operations and that the public convenience and necessity requires the operation proposed. As said in the Commission's report on oral argument and reconsider-

ation, dated January 24, 1941, in the Kansas City Southern Case,

supra, sheet 9:

"It must be borne in mind, as above indicated, that in all of these cases the failroad has been and is transporting the traffic in question between its stations and is under obligation to continue to do so. What it is seeking is not to enter a new field of service but to substitute a more efficient for a less efficient means of service. In both its direct and its indirect effect such substitution is in the public interest. An illustration which will come readily to mind is the widespread substitution in recent years of busses for rail service by local transit companies. One competitive carrier has no vested right in the continuation by another of an inefficient method of operation, and we believe it to be neither the policy of Congress nor the proper function of this Commission to retard any form of progress in transportation which will serve the public interest."

. If the Commission is going to weigh this application on the same scales on which it has weighed these other applications, the

instant application must be granted.

We submit that no further specific conditions or restrictions should be imposed in this Order, inasmuch as applicant's operation by motor vehicle will be auxiliary to or supplemental of rail service.

The shipper witnesses appearing and testifying in behalf of this service favor the establishment of the proposed service as an improvement in transportation facilities. Many shippers prefer to deal with applicant because of its being a wholly-owned subsidiary of The Pennsylvania Railroad Company and because of

its established and complete responsibility.

We submit that the record in this case compels the conclusion that the service here proposed, involving as it does only the transferring of applicants' less-carload tonnage from a freight car to a motor truck, will not and can not endanger or impair the operations of existing carriers contrary to the public interest. Therefore, since this new operation will serve a useful public purpose, responsive to a public demand and need, and since this purpose cannot and will not be served as well by existing lines or carriers, we submit that we have shown beyond doubt that the proposed service is required by the public convenience and necessity and that certificates should be issued to applicants authorizing the proposed operations.

CONCLUSION

The applicant in the within application as amended is seeking authority to extend its motor-truck operation from Fort Wayne, Indiana to Mackinaw City, Michigan. The proof in the record

of this application covering the proposed operation is very convincing, as convincing as in any prior case of this sort that the Commission has had presented to it for consideration. The Commission has consistently approved similar operations of this kind and ought to do so here by granting the within application as amended.

Approval of the proposed operation plan will vastly improve the handling of merchandise of less-carload shipments for The Pennsylvania Railroad Company over proposed routes. The Commission has long recognized that the way-car is poorly adapted to transporting such freight and has in a long line of cases authorized railroads to replace their way-cars with motor trucks. That is all that applicant seeks to do here: to use motor-vehicles in lieu of way-freight cars to transport the less-carload traffic of The Pennsylvania Railroad Company. The applicant presents a plan of operation which has been recommended, and approved by this Commission in other applications, and it has supported this plan with competent evidence showing the desire and need of the public for the service to be accorded by that plan. Those cases should be followed here and the within application granted.

Respectfully submitted.

OSCAR LINDSTRAND.

Attorney for The Pennsylvania Railroad Company as Intervener supporting applicant, 652 Chicago Union Station Bldg., Chicago, Illinois.

DECEMBER 16, 1942.

Certificate of Service

I hereby certify that I have this day served the foregoing Reply to Exceptions of Protestants upon all the parties of record in this proceeding by mailing a copy thereof properly addressed to each counsel of record.

Dated at Chicago, Illinois, this sixteenth day of December 1942.

OSCAR LINDSTRAND

179 Report of Commission, Sept. 25, 1943, omitted. Printed side page 10, ante.]

INTERSTATE COMMERCE COMMISSION

No. MC 2815 (Sub No. 6)

THE WILLETT COMPANY OF INDIANA, INC. EXTENSION, FORT WAYNE-MACKINAW CITY, MICHIGAN, CHICAGO, ILLINOIS

Present: Charles D. Mahaffie, Commissioner, to whom the matter which is the subject of this order has been assigned.

Order

Upon consideration of the record in the above-entitled proceeding, and of request of Mr. K. F. Clardy, representing certain protestants, for an extension of time within which to file a petition for reconsideration or rehearing of the report and order of Division 5 of September 25, 1943; and good cause appearing:

It is ordered, that the time within which petitions for reconsideration, rehearing, or reargument may be filed be, and it is

hereby, extended to December 10, 1943.

Dated at Washington, D. C., this 16th day of October, A. D. 1943. By the Commission, Commissioner Mahaffie,

SEAL

W. T. BARTEL, Secretary.

BEFORE THE INTERSTATE COMMERCE COMMISSION

MC 2815-Sub No. 6

IN THE MATTER OF THE APPLICATION OF THE WILLETT COMPANY OF INDIANA, INC., EXTENSION FORT WAYNE-MACKINAC CITY

Petition for Reopening, Reconsideration, Oral Argument and Other Relief

Nov. 26, 1943

(Figures in parentheses refer to pages of printed record unless contex clearly indicates otherwise.)

This cause was brought on before the Commission on the application of the Pennsylvania Railroad acting through it wholly owned subsidiary the Willett Company of Indiana, Inc. It involves an extension of route from Fort Wayne, Indiana, to Mackinac City, Michigan, with several branch lines included. It was heard over an extended period of time and resulted in a recommended report by an Examiner granting all the applicant sought with perhaps a little added for good measure. We filed exceptions which bear date of October 29, 1942. This printed document is a trifle over one bundred pages in length. In it we have discussed the evidence and the lack of it, together with the legal. points involved. Division 5, however, in an Order bearing date of September 25, 1943, and which was served upon this protestant on October 15, 1943, has completely disregarded everything we. said in our exceptions and granted to the applicant everything it seeks in the fashion it has requested.

The Order is rather short. Its brevity is in large part due to the fact that it has not even attempted to discuss any of the real-

issues involved in the proceeding. Indeed, it disposes of everything suggested by us by saying in a few words on Sheet 5:

"We are not impressed with protestant's contentions" * * *

At no place in the Order does the Division take up a single one of the points of law we have advanced. Neither do they discuss any of our contentions with regard to the evidence and the lack of it. Less than one page is devoted to a brief and incomplete analysis of the evidence presented by the protestants. The nature of this review is such as to convey a wholly erroneous understanding and impression of the evidence. Some statements made in the Order indicate a complete lack of understanding of the undisputed evidence we presented, as we shall endeavor to point out later.

The Order does not at any place give any intimation that these protestants had even so much as cross-examined the few witnesses presented by the railroad. The Order, in reviewing the railroad testimony, states certain things claimed by the railroad witnesses which we thoroughly exploded in minute detail by our cross-examination. None of this is even so much as mentioned. Statements of fact are made as though they had not been completely upset by that cross-examination. The whole Order, therefore, simply reeks of an interpretation of the evidence not justified by the record.

The Division Order is, therefore, defective because of its worse than incomplete recitation of the facts and its complete failure to even mention, let alone discuss, the law involved. It is defective because of its errors of omission and its complete failure to even so much as mention the statute and the things required by it. We propose to show in this petition why we are sure the Division has committed a whole multitude of errors. We do not intend to again set out the many things we have already said in our exceptions. We now specifically incorporate that document in this petition and make it a part hereof, but without completely reprinting it. We shall ask the Commission to take notice of everything there said because, as our argument here unfolds, we intend to dovetail it into what has already been set forth.

PRINCIPLE OBJECTIONS TO ORDER

What we are about to say is not intended as a complete recitation of all the errors and defects we find in the Division Order. It is intended only to serve as a general statement of some of the main obvious defects. We now pray that the Commission refer to our brief of some 116 pages dated August 6, 1942, and to our exceptions of some 104 pages dated October 29, 1942. We specifically now incorporate those printed documents in this petition

and make them a part hereof because a much more complete discussion of the points we seek to make will be found set out in them.

The principle reasons why we object to this order are:

1. The Division has made findings of fact not supported by a single line of testimony.

2. The Division has predicated its grant of authority on a mis-

application of the statute.

3. The Division has applied tests in determining whether public convenience and necessity requires the operation of a wholly improper and illegal nature.

4. The Division has based its order on things that do not exist

and has omitted consideration of many controlling facts,

5. The Division has substituted the refusal of the railroad to do business with any of the protestants for proof of public convenience and necessity.

6. The Division has failed to make proper findings of both law and fact and has thereby presented an untrue picture of the nature of the proof presented.

. 7. The Division has failed to even note the many legal objec-

tions we made throughout the proceeding.

8. The Division has made no finding on the refusal of the Joint Board to permit us to present evidence showing bias and prejudice

on the part of the applicant's witnesses,

As we indicated above, a great many other defects are to be found in the order. These we have pointed out, plus a great many more, are discussed at some length in the two lengthy documents already on file and to which reference is now prayed. In the discussion to follow, we are making no attempt to divide the material into a separate discussion of each of the objections we have pointed out above. We are, however, endeavoring to make it apparent that all of these objections are sound.

In reviewing the action of the Division, we ask that the Commission take especial note of the fact that the Division has not made a finding the protestants could not furnish the service. On the contrary, the Division has seen fit to satisfy only that they are of the "opinion" that the protestants could not do "as well" as the applicant in that regard. We submit that is a wholly improper test. We point out further, however, that the Division could not possibly have made any stronger finding because of the fact that there is not a line of proof in the record to support any finding that protestants could not furnish the service. Neither is there any proof in the record, however, to justify the improper conclusion of the Commission.

Since this case will, obviously, be the vehicle for a test of the Commission's announced doctrine, we urge that this whole pic-

ture be surveyed anew. The order makes it clear to us that the Division is reaching its conclusion through a wholly erroneous and improper method. Apparently it has concluded that under no circumstances can a railroad receive satisfactory service from an independent motor carrier. It reaches that quite apparent conclusion on the basis of findings in other cases. It then jumps to the wholly unwarranted conclusion that the same reasoning must be applied here. It wholly ignores the fact that the applicant made no effort to prove that we could not furnish the service-·but, instead, had merely stated with some emphasis that it did not know about our service and, would not use us no matter how excellent a job we might be able to do. In other words, the Division has substituted the refusal of railroad to use our service. for the statutory requirement. This, we submit, amounts to say ing that protestants are defeated in every case involving a railroad, before the case is even started. This, we submit, is a discriminatory application of the statute and will be the principle point we shall press home.

BASIS OF THE ORDER

Since the entire Order, including the half page entitlement, occupies only five and one-half pages, it will not be difficult to hold it up to the light as one complete whole for the purpose of discovering what has led to the strange conclusion of the Division. Everything in the Order, down to the last paragraph on Sheet 4, is obviously intended to be nothing more than a recital of the factual background. We shall discuss its errors and failures later but now want to have attention focused on that part of the Order commencing with the last paragraph on Sheet 4 and extending down to the last paragraph on Sheet 5 where the Commission's findings start. It will thus be seen that approximately one page of the Order has been devoted to justification for the finding.

A careful reading will disclose that every apprehension we expressed in our exceptions have been more than justified by the loose language used in this part of the Order. In substance, the Commission has said that no independent motor carrier can ever furnish what the Order terms "coordinated" service. As we set out in our exceptions the Division has very effectively said that a railroad is automatically entitled to a certificate paralleling its line, for the mere asking. It reaches that conclusion by saving quite without justification that the motor carrier service is some new and strange animal. Then, without reciting any fact from the record to support it, the Commission jumps to the conclusion that the:

"useful public purpose cannot be served as well by existing motor carriers."

It does not seem to occur to the Commission that this is a complete non sequitor. Nothing is recited at any point in the Order to justify the strange conclusion upon which the entire grant of authority must depend. The only useful purpose this language serves, therefore, is to make it clear both to the Commission and to any reviewing Court that the Division has definitely recognized the necessity for a showing by the applicant that the protesting motor carriers cannot furnish the service.

Since the entire grant must depend upon that language in the Order (although, of course, other defects will also operate to defeat it), it follows that unless the record contains competent evidence to support such a conclusion, the Order cannot stand upon review. We ask that the Commission now turn to our exceptions and then check the transcript. It is as clear as day that the transcript does not contain a single line of evidence to support the Division's conclusion. Let us point out what it does contain.

. The record shows that the railroad at the very outset admitted that it had no knowledge whatsoever with respect to the facilities available to the public including the railroad. This was gone into thoroughly and cannot be disputed. While they did justify our argument that there has been no showing that the competing protestants cannot furnish the service, it is only part of the picture. We specifically forced the railroad witness to admit that they would not make use of any service offered by the protestants under any circumstances. We asked them if they would under any circumstance avail themselves of the service of common motor earriers operating over these routes, even if that service was better than that which they proposed. The answer was given in one short word: "No" (p. 627). No other witness for the applicant said anything about the ability of the protestants to furnish the proposed service. All of the shipper witnesses presented by the applicant, however, have admitted that they would be just as well served if the protestants furnished the service proposed by the applicant. We say all of them so testified because the stipulation. under which the testimony of all but four of the witnesses was received without actually testifying specifically covers this point. We had examined the witnesses they did produce (4) to make sure that they had no preference as to the identity of the carrier who furnished the service, and the stipulation expressly provided that all of the thirty-seven remaining witnesses' testimony covered by the stipulation did include the same answers on cross examination. There is, there ere; not a single line of testimony any where in the record that can furnish the slightest support for the conclusion of the Commission cited above from Sheet 5 of the Order. Indeed, it would be going too far to call the statement they made a finding. They merely say that they are of the opinion that the existing motor carriers cannot furnish the service as well as the applicant. As the record stands, therefore, the Division has wholly ignored this controlling point and has passed it off with a shrug of the shoulders, so to speak.

In the face of a record that does not contain a line of supporting evidence, they have said that they are of the opinion we cannot do as well as the applicant. They do not pretend to tell us the basis in fact for that opinion, nor do they say anything by way of argument to justify that peculiar statement. We now assert that the Order is defective because the finding or opinion of the Commission on the crucial question is wholly without any support in the record. To make the case stronger, we must point out that contrary to this statement by the Division, the record does contain a considerable amount of testimony showing that the protestants are in a position to and can furnish all of the service needed. The protestants went into the situation at length and stated without challenge that they were in a position to furnish precisely the sort of service described by the railroad. In the absence of some testimony to offset that claim, it is incomprehensible to us how the Division could go so far astray. When we note further that in reviewing the evidence the Division has found that at least two of the protestants were furnishing precisely the same sort of service to another railroad at the very time of the hearing, it makes us wonder whether the Division has not approved the Order without noting what it has said. It has expressly found on Sheet. 4 that the Dalias L. Darling Truck Line was:

"serving the Pere Marquette Railroad in substituted service and it would serve the Pennsylvania Railroad in like manner if given the opportunity."

On the same sheet the Division has found that Interstate Motor Freight System, Inc. had:

" * made arrangements with the Pere Marquette railway Company to perform motor-for-rail service for that line."

How can such findings be squared with the statement that these protestants cannot furnish the service just as well as the applicant. A complete and exhaustive study of the Order fails to reveal a single fact upon which the Division could found a conclusion that the applicant was better able to furnish this service. The only thing in the Order is the single assertion that the Commission holds the opinion quoted above. We submit that this is the same fatal error that has crept into all the other railroad cases. The

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Commission has arbitrarily and without reason substituted its private belief and its personal conclusions for evidence. It has concluded that something is true without troubling to inspect the record to see if its beliefs are supported by the testimony. As we pointed out in our exceptions, the applicant had the burden of showing at least two important things:

1. A genuine need by the shipping public for a truck service.

2. The complete absence of motor carriers, or inability on the

part of those in existence to furnish the required service.

Every line of the testimony presented by the applicant on the score of claimed need dealt entirely with the abstract question of whether a better service could be rendered if the less than truckload traffic was transferred to trucks. In other words, the whole effort on the part of the applicant was devoted to trying to establish the first of the two propositions set out above. Not a single line of testimony, however, was presented with respect to the second of these two major propositions. While we have disputed the applicant's claim that they have proved even the first point, we want to emphasize the complete absence of testimony with respect to the second one. Proving the first one alone is not sufficient. Proving the second one was undoubtedly not undertaken because the railroad recognized the impossibility of doing so.

It is significant that the Division in its Order has not seen fit to recite a single bit of evidence dealing with the second of the two major propositions, except where they have briefly reviewed our testimony showing that protestants have the facilities and the ability to furnish the service. We think any unbiased person who reads this Order will be rather surprised at the conclusion, after reading this rather sketchy review of the evidence presented by the protestants. It seems unbelievable when we note that the Order does not, at any place, even attempt to review any evidence it might claim contradicted the proof presented by the protestants. We are sure this omission is based on the same thing that made

the railroad steer clear of it at the hearing.

In substance, therefore, the Division can only justify its conclusion that protestants cannot furnish the service as well as the applicant on one ground or argument. It must have accepted the brutal refusal of the railroad to use our service as a complete and adequate substitute for evidence that we could not furnish the service. In this the Division Order is so discriminatory that we feel our statements made in our exceptions, with regard to this subject, more than justified. The Division has, without justice or reason, made the statute have one meaning as applied to a railroad applicant and a totally different one where an ordinary motor carrier applicant is involved.

General Discussion Of The Order As a Whole

The facts recited on the first four pages of the Order are not very complex. The Division gives the applicant the benefit of all doubts and devotes Sheets 1, 2 and 3 to a discussion of its testimony. It devotes a trifle less than one page to the testimony presented by the applicants, although we actually placed more witnesses on the stand and developed many more facts. The review of the applicant's evidence wholly omits any mention of the rigorous and extensive cross examination of their witnesses. It is, therefore, a wholly incorrect picture we find painted in that part of the Order upon which all of the findings must be based.

The first page recites the fact that the applicant is seeking certain described rights, and is presently operating a number of truck routes paralleling many miles of the Pennsylvania Railroad. The second sheet then points out that the applicant's stock is owned by another corporation which, in turn, is wholly owned by the railroad. There then follows a paragraph purporting to describe the proposed service in the language used by the applicant. The

old phrase that the service is proposed to be

"auxiliary to and supplemental of the rail service in the transportation of less than carload freight."

is then set out.

These high sounding phrases were never defined at any time in this or any other record we have been able to read. This is rather peculiar because it will be noted that this, as well as the other rail decisions, have depended almost entirely on some marvelous benefits that are supposed to flow from service which is "auxiliary to and supplemental of" railroad service.

If repetition of undefined phrases adds strength to a case, then this case certainly has it. The only explanation of what is meant is the few sentences that follow this statement on Sheet 2. The Division again quotes from the argument of the applicant without

giving credit by saying that:

"The general plan of this coordinated service is to transport such traffic by rail between key or break-bulk stations and thence by truck to the intermediate or way stations. Conversely, applicant would collect freight at the way stations and transport it to

the key stations for movement beyond by rail."

These two sentences are all that are devoted to explaining the phrase 'coordinated service'. The language which follows on Sheet 2 points out that the termini of each of the seven connecting routes (wny it calls them connecting we don't know), are large cities and that the service between Fort Wayne and Grand Rapids is frequent and the volume of tonnage is heavy as compared with

the much lighter tonnage and service to all of the other or inter-

mediate points.

The next paragraph on Sheet 2 recites, as though it had been established without question, some claimed facts concerning the amount to be transported between some of the points. It is extremely significant that the Division does not even comment on the fact that the railroad refused point blank to give either the protestants or the Commission any figures showing precisely what tonnage had been moving or would be moved to and from each of the small towns along the way. There is nothing in the record to indicate whether all of these intermediate points would actually receive any worthwhile freight or not. All of the seven separate routes are quite obviously not in the same factual position. We sought in vain to compel the railroad to break down the figures but now find the Division upholding them in their refusal. At the same time, the Division, in the absence of proof to show that there is substantial and worthwhile tonnage to all of the points on all of the seven routes, has stated it to be a fact that there is considerable tonnage to all of the points. They have, therefore, made a finding not only not supported by the record, but one which is contradicted by the facts we developed.

The last paragraph on Sheet 2 contains a misstatement of fact that we have already tried to impress upon the Division in our exceptions. This paragraph recites in substance that the rail-road will not handle any more less-than truckload freight on its rails. It does not say that directly, but implies it when it says that "peddler" card will be discontinued. On the basis of that statement, they then say that this will release freight cars for use in other trains. This we challenge. The railroad witness stated that they would continue to furnish local service by rail at the option of the shipper or consignee. No one can say, as a matter of fact, that anything will be eliminated. Certainly, even the Division admits that the train which runs the local freight will continue to operate. The next statement made in this paragraph, however, is so very wrong we cannot imagine

where it came from. They make the statement:

"For every freight car eliminated the necessity for switching that car in the yards also will be eliminated as well as the at-

tendant expense."

This is plainly a case of inventing evidence. Some vague chance testimony about how the railroad hoped to operate was presented over our objection, but even the railroad did not claim that there was going to be any such thing as a complete elimination of switching. Since they admit that the freight may continue to move by train, the Commission is not justified in finding

that, as a matter of fact, this will be true. As we have pointed out earlier, however, the elimination of expense to the railroad is not material to the case anyway. The concluding sentence in the last paragraph on Sheet 2 recites that the operations will expedite the movement of less-than-carload traffic from 24 to 48 hours. This loses sight entirely of the cross-examination whereby we demonstrated that this was a guess at the best. It also overlooks the fact that we presented positive testimony on that specific subject by men who had had experience on railroads completely contradicting that claim. We are not even accorded the right of having that testimony mentioned in this short summary of the proof.

The first paragraph on Sheet 3 claims that a railroad representative described benefits but fails to mention them. The Order then

says that:

numerous shippers and receivers of freight at points on the rail line expressed a belief that this type of service would

be advantageous to them in their business enterprises."

This we dispute. Four witnesses were sworn. The first one stated that the railroad, as it was presently operating, was satisfactorily meeting his needs (ppe. 318-331-332). Their second witness testified that he was satisfied with the service (p. 387). The third witness stated that the service of the railroad was generally satisfactory (p. 405). The fourth witness agreed that his present service was adequate to meet his needs (p. 419). He repeated this later (p. 422). These are the "numerous shippers and receivers of freight," because they are the only ones that actually testified. The other thirty-seven will be touched on a little later. None of these four made any effort to detail any need for the proposed new service, nor did any of them tell us in any way how it would be of an advantage to them. Even the Division, however, has diluted its expression on this point by saying that these witnesses spoke only of a "belief" in that regard.

The next four paragraphs then deal with the four witnesses we have mentioned just above. Note that even the Division grudgingly admits that the first witness admitted that "present rail service is generally satisfactory." The Division concludes the last sentence of the paragraph dealing with this man by saying that he testified that a saving of 24 hours in transit would benefit him. As a matter of fact, he did not make any such positive statement. He was asked whether the speeding up of rail service would serve the convenience and necessity of his business. He answered:

"It will help us I think. Yes, sir" (p. 312).

On cross-examination, when we sought to find out why he thought it might help. We ultimately drove him to admitting that

he knew little about competing motor carrier service and that the reason he did not know was because the service he had been receiving from the railroad was good enough to take care of his

needs (pps. 331-332).

The third paragraph on Sheet 3 attempts to review the testimony of their second witness. After reviewing the matter of his company's business the paragraph concludes with the statement that this witness had said that the proposed rail-motor service would be a definite advantage to his company. This witness did not make any such blanket statement. Search as you will, it will not be found that this witness even stated that the service "would be a definite advantage" to him. Even the applicant, in its review of this man's testimony on pages 48-50 of its brief of August 21. 1942, made no such claim. The stéreotype question of whether this kind of service with a 24-hour saving would serve the convenience and necessity of his company was addressed to this witness. Upon cross-examination, however, we developed the fact that in so far as the needs of his company is concerned, the present rail service is satisfactory (p. 387). The Division summary of this man's evidence, therefore, is not accurate and, as in the case of all of the other witnesses, wholly omits all reference to the change of position brought about by our cross-examination.

The fourth paragraph of Sheet 3 reviews the testimony of the applicant's third witness by describing the character of the business in which he is engaged. It concludes with this sentence:

"The present rail service is too slow, and if the above-described movements could be expedited by 24 hours his particular business

would be benefited."

Here is a case in which the Division has certainly gone overboard. This man'stated that on one particular shipment from Milwaukee, the rail service had been slow but he admitted that, generally speaking, it had been satisfactory (p. 405). The Division wholly omits to mention the fact that this man is an employee of the railroad. It does not mention the fact that he is furnishing pick-up and delivery service for the railroad at his town. He did not even claim that there would be any particular benefit accrue to him and we challenge the Commission to place its finger on such a statement.

The fifth paragraph on Sheet 3 devotes only a few lines to the fourth and last shipper witness the applicant presented on the stand. This paragraph claims that the witness said that a saving of 24 hours would benefit his business. This witness frankly admitted, however, that his present service was meeting his needs (p. 405). We then asked a very important queestion on cross-

examination, which the Division had seen fit to omit from the discussion. We asked:

"Q. Would it make any difference to you as to the identity of the truck line that gives you the service that they discussed with you?

A. As to which line it would be?

Q. Yes.

A. No." (p. 421).

This question goes to the very heart of the case. We ask that particular note be made of the discussion that follows immediately below. Before leaving this witness however, may we now point out that not a single one of the 4 witnesses whose testimony the Division has reviewed, has claimed at any point that he was not presently receiving satisfactory service on the whole. Not a single one of the witnesses has said that the present available service is failing to meet his needs. Even the Division has not undertaken to review any such claim. Bearing in mind the fact that these 4 witnesses are the only ones who testified in person, we think it important for the Commission to note that none of them is represented as saying that the present service is such that he cannot get his merchandise moved in an adequate and satisfactory manner by present facilities.

It is also of considerable importance to note that not a one of these witnesses made any claim that it would be necessary for the applicant to furnish the service. Obviously, they could not do so because of their lack of knowledge. In view of the fact, however, that it is necessary for an applicant in this kind of case to show that there is no existing carrier capable of furnishing the service, we want to nail down the fact at this point that the Division has not even pretended to recite any evidence thus far even remotely concerned with the most important question in the

whole proceeding.

The sixth and last paragraph dealing with the evidence presented by the appellant states that 37 other shippers' testimony was presented by means of a stipulation. The grave error in this paragraph lies in the last sentence. This reads:

"These shippers consider the coordinated service essential to their representative businesses and desire that such service be

instituted."

When the Division says that these 37 shippers considered this service "essential" to their business, it is placing words in their mouths that were not used by a single one of these witnesses. Even the applicant has not had the temerity to make such a claim. The claimed substance of these stipulations will be found set for them pages 63 and 64 of the August 21, 1942, brief of the appli-

cant. It will be most illuminating for the Commission to read those claims. Bear in mind that the applicant is certainly not slighting itself in making these claims. The only thing found in all the stipulations is the continual statement that the proposed service would serve the convenience and necessity of the particular shipper. That is a far cry from the statement by the Division that this service is "essential" to their business. . It is especially true when we note the fact that our cross-examination of the fourth and last shipper witness they presented on the stand is recalled. Turning back in this document the Commission will find the citation we refer to. At page 421 this witness frankly admitted that it would not make any difference to him whether the protestants or some other motor carrier instead of the applicant should furnish the service (p. 421). The stipulation, as the applicant has noted at page 58 of its brief, was that the cross-examination of each of these 37 witness was to be taken as substantially the same as that of the 4 witnesses they did present on the stand. This means, therefore, that these witnesses must be considered as having all admitted that they would be just as well served by the protestants as by the applicant. Why the Division has overlooked this point we stressed in our exceptions, we do not know. It is regarded by us as vital. We would not have stipulated the testimony, however innocuous it might seem to be, if this had not been well understood. In so far as one major point is concerned, that part of the stipulation completely destroys any claim that these protestants could not furnish the service.

Testimony of All of Applicant's Shipper Witnesses Erroneously

Considered

We come now to another point that we think is fatal to the case of the applicant. We have pointed out in our briefs and in our exceptions the fact that the Joint Board refused to permit us to present testimony at the last hearing we still consider controlling. During the interval between the presentation of the applicant's case and the time we presented our own, we caused a rather extensive survey of traffic to be made. In the course of so doing, each of the shipper witnesses named by the applicant was interviewed. To our astonishment we discovered something of a most unusual nature. These witnesses admitted that they had testified in support of the railroad for reasons that completely destroyed both the weight and credibility of everything they had said. They admitted that they had appeared either because they were employees and compelled to do so, or because they did busi-

ness with railroad employees and had been placed on the spot when requested to appear, or for some other equally improper. In no case did they appear because they needed any service. We sought in vain to present the evidence we had collected on this score. It was clearly admissible on any one of several theories. It would have completely destroyed the validity of every line of shipper testimony. Since the Division has treated that testimony as of great importance, it is obvious that the exclusion of all evidence contradicting these witnesses out of their own mouths is a fatal error. The refusal of the Joint Board to permit such perfectly competent evidence is an error of major proportions. We insisted upon it from the beginning and we shall insist on it in any Court review of this Order. We are gravely concerned over the failure of the Division to even so much as mention this fact in reviewing the evidence of these witnesses. We made an offer of proof and we made every possible effort to get that testimony before the Joint Board. If it had been received, it could have only operated to destroy the validity of every claim being made based on the testimony of the applicant's shipper witnesses. We submit that this error can only be cured by a complete reopening of the case and its being reset for a complete new hearing. Justice demands that this be done. Any other course amounts to saying that even though we were possessed of competent proof, that would have destroyed every line of shipper testimony they presented, the Commission is going to shut its eves to that fact and ride these protestants into the ground withour regard for the facts.

Protestant's Testimony

We have set forth a rather complete resume of the testimony presented by the protestants in our brief of August 6, 1942. In order that we may conserve paper and not burden the file too much, we pray reference to pages 40 to 71 for a resume of our proof. Since the Division has devoted practically no space to our summary of the evidence, we also ask that the Commission again review all of the pages of the transcript dealing with this proof. We presented some 2f witnesses on the stand and the testimony of some 17 additional was entered by a stipulation. Many of our witnesses testified at length about the satisfactory nature of the service the protestants were furnishing between the points involved in the application. Since the Commission will unquestionably go to the transcript to verify everything said, we shall not devote much time here to a review of that evidence.

In substance, the protestant's motor carrier witnesses testified that they could and would furnish the service described by the

railroad. These witnesses also testified that they were fully equipped to handle the business and that there was nothing unusual or out of the ordinary involved in serving this railroad. The Division has found that some of the protestants are presently furnishing service to the Pere Marquette Railroad of the same kind involved in this proceeding. In reviewing the testimony, therefore, the Commission will find that there is no dispute about the fact that we can and will furnish the service if the railroad will give us the opportunity.

General Summary Of All Of the Evidence As Reviewed By The Division

Now that we have gone over all of the evidence presented by both the applicant and the protestants, we pause to summarize all of the testimony the Division has related as a foundation for its conclusion. It has very briefly reviewed the testimony of four shipper witnesses, after discussing the testimony of a railroad witness and the general manager of the applicant. This shipper testimony, even if accorded all the weight given it by the Division in its review, amounts only to saying that the four shipper witnesses presented on the stand have said that the institution of a motor carrier service of this general character would be of some value to them. No more than this is even claimed by the Division for the 37 shipper witnesses who did not take the stand.

Note well the fact that the Division does not recite any claimed evidence showing that it is necessary that such service be furnished by the applicant and no one else. Throughout that part of the Order which follows the review of the evidence, we find the Division quite obviously trying to say in several different ways that the applicant was best fitted to carry on the proposed service. Yet, significantly enough, not a single line of testimony has been mentioned anywhere even remotely touching upon that subject. Indeed, the review of the evidence completely ignores the crossexamination where we forced their witnesses to admit that they had no choice as to who should furnish the service. How then can the Division conclude, as it does on Sheet 5, that the existing motor carriers cannot furnish the service as well as the applicant? Where in the Order is there any evidence recited to support that conclusion? Where in the record can any such testimony be The answer is plain. There is no such evidence. That is the sole reason why the Division failed to make mention of such tostimôny.

Now, of course, this argument has left out of consideration the testimony presented by the applicants. As we have noted, even the Division has been forced to admit that some of the protestants

are furnishing the same kind of service to the Pere Marquette. Our own witnesses testified without contradiction that they thoroughly understood the kind of service the applicant proposed to furnish and that they could and would furnish that service. They testified without challenge that they were, in fact, furnishing

that kind of service every day.

From a factual standpoint, therefore, even the Division has admitted that we have a record wherein there is to be found no testimony going to show that present carriers cannot furnish the Yet, the Division, in face of the fact that there is no such testimony, has specifically found that the existing motor carriers could not furnish the service as well as the applicant. Note well the fact the evasion of the main point. The Division has not attempted to say that the protestants could not furnish the service. They made it comparative matter by saving that we gould not furnish it "as well", as the applicant. We father strongly " suspect that if a hundred carriers operate between a given set of points, all of them would not be able to furnish service on precisely the same level. We submit, nowever, that comparing: the service of the applicant with that of the protestants is not a proper test, eyen if there is evidence to warrant the Division's conclusion. Since, however, no witness presented by the applicant even claimed to know anything about the character of the service of any of the protestants, how can it be possibly held that the applicant's service is superior to any possible service that might be furnished by the protestants! . We think we know what has been in the mind of the Division. We believe it has decided this case on the basis of a general belief and an improper understanding of the particular facts in this case. . .

As we view the case as a whole, therefore, and as we go over the Division findings of fact, we are driven to the conclusion that, the Division holds every one of the improper beliefs we fought. against so vigorously in our exceptions. It now appears to us that the Division is trying to say, through this Order, that no independent motor carrier can possibly be permitted to furnish service of this kind for a railroad; if the railroad expresses any objection. We are now convinced that the Division is taking the position that a motor carrier not owned by a railroad cannot furnish the kind of service a wholly owned subsidiary can furnish. On that mistaken general belief, the Division, has therefore, erroneously concluded that it is not necessary to examine the facts in a particular case to see whether or not they are wrong. Inother words, the Division seems to be saying that under no circumstances can any independent motor carrier ever defeat an applicant owned or controlled by a railroad. If this is not the substance and essence of this entire Order, then there is something we have wholly missed in reviewing it.

GENERAL DISCUSSION

In our original brief and again in the exceptions we have referred to above, we discussed all of the points suggested in the foregoing pages of this petition. In addition, we raised a number of other objections. The rather extensive discussion in those two documents, when read in connection with what we say here, will present a complete picture of the defects we think are important.

Since the filing of those two earlier documents, the Division Order on which we now seek reconsideration and oral argument, has repeated the earlier errors and added many to them. As we have pointed out earlier in this document, many things set out in the Division Order as facts will be found to lack support in the record. For example, it is beyond dispute that there is not a line of testimony in the record showing that the applicant can furnish service any better than the protestants. Neither is there any testimony to show that the protestants cannot furnish all the service required.

Other statements concerning other phases are made without there being the slightest evidence in the record to support them. The order is quite obviously based on an interpretation of the statute not at all in accord with its true meaning. It has, in our judgment, construed the statute to require one thing when applied to an ordinary motor carrier and a totally different thing when applied to a carrier owned or controlled by a railroad. Since this is discussed at length in the two documents mentioned, we

shall not repeat here.

The order shows on its face that the Division has determined the question of public convenience and necessity on a wholly improper basis. In the face of admissions by the applicant that it knew nothing about existing motor carrier service, the order nevertheless proceeds to find that the applicant can better furnish the service than the existing carriers. The only basis for its conclusion in that respect is the wholly improper general belief that the railroad must own the motor carrier and that such ownership will automatically guarantee better service. Here again is a point we have discussed at length in the two documents already on file and to which we have directed the Commission's attention.

It does not seem possible to us for anyone to conclude that there is any more basis for the grant of a thority than the blank refusal on the part of the railroad to use our service. The order substitutes that refusal for the proof ordinarily required of other carriers that the public convenience and necessity requires the

service. In our judgment, the Division has applied the wrong statutory test and has substituted this blank refusal for the solid proof required of everyone else. It is for that reason primarily that we say that this order is an arbitrary and discriminatory application of the statute.

The order takes no note of many important facts set out in the record. In particular, the order fails to even note the fact that, we demonstrated through many witnesses that there is a wholly satisfactory service in existence serving all of the points in question. The order takes no note of the fact that on cross-examination every witness presented by the applicant admitted that his present rail service is adequately meeting his needs. Most important of all is the failure of the order to even mention the fact that the applicant's witnesses have admitted that it would be just as satisfactory to them if the railroad used our service instead of using the applicant. We think this is an omission that cannot be justified because it goes to the heart of the case.

While a great many other things could be mentioned, we name only one final defect. The Joint Board refused to permit us to present competent proof showing bias and prejudice on the part of every one of the applicant's witnesses. The failure of the Division to even mention that important point can indicate only one of two things. Either the Division did not note this fact, despite our insistence upon it, or it believes it is of no moment. If one of these two reasons does not explain the failure, then we would be forced to conclude that it has been omitted for some reason that obviously would be improper. In any event, we still insist that our point in this connection is sound and that all of the other, objections made throughout the proceeding; and which we have urged repeatedly ought now to be reconsidered.

CONCLUSION

We shall appreciate an early disposition of the issues because we think this case presents an important set of questions that ought to be tested. As we have urged in the other documents we have filed, the Commission, in other cases, has adopted rules of interpretation that have seemed to motor carriers generally to be without justification. As we have said elsewhere, this decision now makes it quite certain that the real basis for this order is the Commission's belief that independent motor carriers should not be permitted to transport merchandise offered them by a railroad. Indeed, the order makes it quite clear to us that if a railroad asks for authority it cannot be defeated by any possible showing made by carriers already in the field. The discriminatory feature of

this and similar orders lies principally in the fact that the basis for those orders seems to be a mistaken general philosophy adopted by the Commission for general application in all cases involving a railroad or its subsidiaries. We have analyzed every order issued by the Commission involving a railroad applicant at some length. We are unable to find anything in any of those orders holding out any possibility of a successful defense by an indea pendent motor carrier against any railroad applicant. On the contrary, when all of the reasoning is carefully analyzed, it will be found to resolve itself down to a statement that, if a railroad applicant shows that it will not do business with independent motor carriers, it need show nothing more in order to receive the authority requested. Every sentence and every phrase used in the present order point in that direction. When the present order is taken apart sentence by sentence, it will be found that the Commission has simply said that while the protesting carriers have proved that they could furnish the service, the Commission being of the opinion that it adopted in earlier cases, is, nevertheless, convinced that only the applicant can or should furnish the service. The order seems so contrary to the facts, it is difficult for us to understand the mental processes whereby the Division reached its conclusion. We submit that if the record is carefully scanned, all of the errors we have pointed out will be found to be present and, in addition, a great many more will be discovered.

. We respectfully pray that this matter be set down for oral argument. We think we should be given an opportunity to point out to the Commission as clearly as possible a great many facts and arguments that the individual Commissioners have not had brought to their attention directly. The screening process through which this and other documents must go has pretty effectively served to prohibit all of the members from getting a first-hand impression from what we have said. This can only be done through the medium of oral argument. As we view it, the whole future of the motor carrier industry is involved in the doctrine established by this and related cases. In addition, the proposed restrictions which the Commission seems to feel will prevent competition with existing motor carriers are absolutely meaningless and will not even come close to doing what the Commission seems to believe they will accomplish. At an oral argument we can, we believe, demonstrate many things that the printed word make difficult to get across. We pray also that the Commission reopen : the matter to permit us to present proof the Joint Board refused to admit. Conditions have altered a great deal since the trial of the cause and such changes should be shown. If granted a reopening, we will present proof going to show many things contradicting the beliefs expressed in the present order. Finally, we pray that the Commission will reconsider the whole matter and deny the application in its entirety.

Respectfully submitted.

INTERSTATE MOTOR FREIGHT SYSTEM, PARKER MOTOR FREIGHT, By K. F. CLARDY,

Attorney for Protestants.

Dated at Lansing, Michigan, this 11th day of November 1943.

CERTIFICATE OF SERVICE.

I hereby certify that I have this day served the foregoing document upon all parties of record by mailing a copy thereof properly addressed to each such party.

Dated at Lansing, Michigan, this 24th day of November 1943.

K. F. CLARDY.

1193 Before the Interstate Commerce Commission.

Docket No. MC-2815 Sub No. 6

IN THE MATTER OF THE WILLETT COMPANY OF INDIANA, INC., OF CHICAGO, ILLINOIS, FOR A CERTIFICATE OF CONVENIENCE AND NECESSITY—MICHIGAN EXTENSION

Joint reply of applicant The Willett Company of Indiana. Inc., and Intervener, the Pennsylvania Railroad Company, to Petition of Protestants, Interstate Motor Freight System. Inc., and Parker Motor Freight for reopening, reconsideration, oral argument, and other relief

Dec. 20, 1943

 $\cdot 1$

The Willett Company of Indiana, Inc., applicant herein and The Pennsylvania Railroad Company, intervener herein, hereby file their joint reply to the petition of Interstate Motor Freight System, Inc., and Parker Motor Freight, heretofore filed with the Commission under date of November 19, 1943 (due date December 20, 1943) to the report and order of Division 5 under date of August 6, 1943, granting to applicant the things applied for in said application herein, as amended, and would respectfully represent and show to the Commission that The Willett Company of

Indiana, Inc., is the applicant herein and the Pennsylvania Railroad Company is intervener herein of record. That applicant
is a corporation duly organized and existing under and by
1194 virtue of the laws of the State of Indiana with its principal
office and place of business in Indianapolis, Marion County,
Indiana, and with its operating office at 323 West Polk Street,
Chicago, Illinois. That applicant is now and has continuously
been engaged as a motor carrier in interstate commerce by motor,
vehicle since its incorporation under the laws of the State of
Indiana on the 7th day of May 1934.

H

That the herein application was duly set for hearing at Indianapolis, Indiana, where a hearing was duly held on February 10 and 11, 1942, at which time applicant and intervener presented their evidence before Joint Board 23, before whom said application was set for hearing. That said hearing was duly adjourned after the receipt of said evidence and set for further hearing at Lansing, Michigan, where on June 1 and 2, 1942, the protestants presented their evidence before said Joint Board No. 23.

111

Thereafter on the 14th day of September 1942, there was issued herein a report and recommended order by Examiner Walter W. Bryan to whom said matter was referred by the Commission in which he recommended the granting of said application. To said report and recommended order exeptions were filed by certain of the protestants, to wit: Interstate Motor Freight System, Inc., Parker Motor Freight, Day's Transfer, Inc., O. I. M. Transit Corporation, Wolverine Express, Inc., Norwalk Truck Line Company, Norwalk Truck Line Company of Indiana, Inc.

1195 A reply to said exceptions was duly filed by applicant and said intervener herein on the 16th day of December, 1942.

IV

Thereafter Division 5 duly issued its order under date of S. ptember 25, 1943, granting to applicant the usings prayed for in its application as amended.

The time for filing petitions to said order of Division 5 was duly extended upon request of one of the protestants, to December 10, 1943, to which a petition was filed by only two of the protestants, namely, Interstate Motor Freight System, Inc., Parker Motor Freight, on November 11, 1943, on which date, said two protestants

filed their petitions for reopening, reconsideration, oral argument, and other relief, to which the herein joint reply by applicant and intervener is respectfully addressed.

V. Historical Matter

The applicant and intervener feel that at the outset the Commission should bear in mind that the applicant is an existing motor carrier engaged in interstate commerce and is an existing motor carrier the same as protestants are existing motor carriers and is entitled to be considered as an existing motor carrier the same as protestants. The Pennsylvania Railroad has used applicant extensively in this station-to-station substituted truck service for it and has employed it to perform this service, practically blanket-

ing its entire system from the Indiana-Ohio State Line west 1196 to St. Louis in Indiana and Illinois, with Chicago on the north, Louisville, Kentucky, on the south and East St. Louis,

Illinois, on the west, commencing in 1933.

The applicant has been declared to be a common carrier by motor vehicle of commodities generally in interstate commerce by the Commission under and by virtue of its certificates of convenience and necessity heretofore issued to it under Nos: MC-2815 ("grandfather") No. MC-2815 (BMC-10), and Nos. MC-2815 Subs 1, 2, 3, 4, 5, 7, and 8; that in said business applicant is now and has at all times since its incorporation been engaged as such motor carrier in line haul operations in substituted service in the transportation of less than carload freight for the Pennsylvania Railroad between points on the lines of the Pennsylvania Railroad; that all of applicant's service authorized in said certificates and the service applied for herein is limited to service which is auxiliary to and supplemental of the rail service of the Pennsylvania Railroad, moving on the bills of lading of the Pennsylvania Railroad and subject to the tariffs of said railroad. The applicant has no relationship with the public as far as tariffs, bills of lading, etc., are concerned. In said service it performs no transportation service directly for the public. It only performs this service for The Pennsylvania Railroad.

VI

Applicant is a wholly owned subsidiary of The Pennsylvania Railroad Company. The intervener, The Pennsylvania Railroad Company, is a party of record to the herein proceedings and

in examining and cross-examining witnesses, and in the preparation of and filing of briefs and replies.

The intervener, The Pennsylvania Railroad Company, is vitally interested in these proceedings as is shown by the evidence herein

and briefs and replies heretofore filed:

The schedules and operations of applicant are entirely dependent upon the schedules and operations of the rail service of the Pennsylvania Bailroad, and it is vital and essential in the performance of the service herein applied for that the intervener secure the service of a motor carrier which can and will meet the truck schedules required by the intervener in the performance of this service.

VII

That we may at the outset get a full picture of the herein proceedings and the magnitude of the present operations of applicant for intervener, The Pennsylvania Railroad Company, we set forth the present authority which the applicant has and which is being used in performing this same type of service for the Pennsylvania Railroad.

In each and all of the hearings held under the applications and certificates hereinbefore referred to, various protestants bitterly fought the granting of the applications. The same type of opposition has prevailed in all of the hearings and in each and all of the certificates there has been the same finding in the orders grant-

ing applicant the authority sought as in the instant applica-1198 tion. It is exactly the same type of service which is now

being rendered under the present certificates hereinbefore referred to as having been issued to the applicant, that the intervener desires the applicant herein to perform over its rail lines in the State of Michigan north from Fort Wayne, Indiana.

On the 5th day of January 1942, under No. MC-2815 (BMC-1, "grandfather" application), applicant was granted authority by certificate to operate in such substituted service for the Pennsylvania Railroad over the following routes: Logansport to Columbia City, Fort Wayne to Plymouth, Fort Wayne to Butler, Fort Wayne to Monroeville and Indiana-Ohio State line.

The routes covered therein are not involved in the herein application, they are only referred to for the purpose of showing the connecting authority which applicant has and showing its routes covering certain other porcions of the Pennsylvania

Railroad.

VIII

On the 3d day of June, 1941, under MC-2815 Subs No. 3, 4, and 5, the applicant was granted authority by certificate to operate in such substituted service for the Pennsylvania Railroad over the following routes:

Sub No. 3: Union City, Ind., to Bradford, Ohio.

Sub No. 4: Chicago, Ill., to Logansport, Indiana, Chicago, Ill., to Plymouth, Indiana, Terre Haute, Ind., to Decatur, Ill. 1199 Sub No. 5: Logansport to Effner, Indiana, Logansport to South Bend, Indiana, Terre Haute to Frankfort, Indiana, Columbus to Cambridge City, Indiana, Indianapolis to Shelbyville, Indiana, Indianapolis to Rushville, Indiana.

The routes covered therein are not involved in the herein application, they are only referred to for the purpose of showing the connecting authority which applicant has and showing its routes covering certain other portions of the Pennsylvania Railroad.

IX

On the 14th day of February 1940, under No. MC-2815 (BMC-10) and Subs 1 and 2, applicant was granted authority by certificate to operate in such substituted service for the Pennsylvania Railroad over the following routes:

MC-2815 (BMC-10): Columbus to Madison, Indiana, Effingham to East St. Louis, Illinois, Terre Haute, Indiana to Effingham, Illinois, Indianapolis to Terre Haute, Indiana, Indianapolis, Ind., to Louisville, Ky., Logansport to Union City, Indiana.

MC-2815 Sub No. 1: Fort Wayne to Richmond, Indiana, Logansport to Richmond, Indiana, Indianapolis to Richmond, Indiana, Columbus to Madison, Indiana (mail and express only).

MC-2815 Sub No. 2: Indianapolis to Logansport, Ind., Indianapolis to Vincennes, Ind.

The routes covered therein are not involved in the herein application, they are only referred to for the purpose of showing the connecting authority which applicant has and showing its routes covering certain other portions of the Pennsylvania Railroad.

V

On the 28th day of May 1943, under No. MC-2815 Subs No. 7 and 8, applicant was granted authority by certificate to operate in such service in substituted service for the Pennsylvania Railroad over the following routes:

MC-2815 Sub No. 7: Anderson to Matthews, Indiana.

MC-2815 Sub. No. 8: Logansport to Fort Wayne, Indiana (alternate routes).

The routes covered therein are not involved in the herein application, they are only referred to for the purpose of showing the connecting authority which applicant has and showing its routes covering certain other portions of the Pennsylvania Railroad.

XI

And now we will direct our attention specifically to the matters set forth in the petition for reopening, reconsideration, oral argument, etc., filed by two of the protestants under date of November 11, 1943, whose date of service by counsel for said protestants was certified to as of November 24, 1943. By the rules of the Commission the date for filing reply thereto expires on December 20, 1943.

To begin with, the petition to which this reply is addressed is of the same type and character of the other pleadings filed hereinbefore by said protestants. It is not

arranged in any order or sequence but is a rambling disconnected attack on the order issued by Division 5. In justice to the protestants we must say that this was how they intended it, because on page 4 of the petition they say.

"In the discussion to follow we are making no attempt to divide the material into a separate discussion of each of the objections

'we have pointed out above."

It is difficult to conceive of any objections in law or mechanics which protestants have omitted. They do not only include the matters set forth in the petition but they ask that all of their briefs and exceptions heretofore filed be made a part of the present petition.

Applicant and intervener would therefore also request that their briefs and replies hereinbefore filed be made a part of and con-

sidered as a part of the herein reply.

At the outset on the first two pages of their petition the protestants complain that the order is too short; at another place the complaint is that not enough space in the order has been allocated to the protestants' evidence. At another point they complain that too much space has been allotted to a discussion of the applicant's evidence. These protestants seem to feel that the space element had a great deal to do with and was a controlling element in the order of Division 5.

Complaint was made that the order did not contain argument to support the finding; at other places criticism is made that there

was not a line of evidence to support the findings, and apparently in others there was too much to suit the prot-

estants; complaint was made that Division 5 in the order did not discuss the law and that it even failed to mention the Statutes. Well, we have looked in vain in this petition for some discussion of the law or the Statutes and find its pages are vacant in that regard. Criticism was leveled at Division 5 for a complete lack of understanding of the undisputed evidence in the case;

then there was a very modest claim that protestants had thoroughly exploded in minute detail all of the "railroad evidence" in Complaint is made that none of this explosive factor was mentioned in the order. Claim is then made that statements in the order were recited as if none of these matters had been "completely upset by the cross-examination of protestants." In fact, one of the principal claims made in the petition pertained to the devastating all-destroying effect of the protestants' crossexamination. Very frankly, applicant and intervener were very well satisfied with their cross-examination. In the narrative of the evidence which we set forth in our original brief we not only set out in detail a narrative of the evidence on direct examination. but we also set out the cross-examination of protestants. We were very well pleased with the assistance which we received from this cross-examination. If by any chance on direct examination we omitted a point it was sure to be brought out in our favor on cross-examination. Then the complaint was made that the order was incomplete in its recitation of the evidence; the order was charged with "reeks of an interpretation not instified."

1203 Naturally the foregoing thunderbolts which were leveled at the order do not deserve any reply and they will not receive it. All of the charges were directly or indirectly made in all of the other pleadings which have been filed by protestants herein, and they were verbally blasted forth at the hearing. It is apparent that at the hearing the Examiner and the Board Members paid no attention to them; it is equally apparent that no attention was paid to this type of criticism by Division 5 in writing its order, and we do not believe the full Commission will take time or space to even mention them.

The main criticism and complaint which protestants have leveled at the application and the orders is that the law which is being followed by the Commission in this class of cases is utterly and completely at fault. If this were some new or novel question involved and was being raised for the first time, it seems to us that one would be justified at a hearing and in pleadings in taking the opposing these propositions as decided by the Commission and the Courts. At the hearing a great deal of time and in our judgment useless time, was taken by protestants in attacking the law which is favorable to the applicant and which has been decided by the Commission and the Courts over a period of years as pertaining to this class of cases. There are more than one hundred cases which have been decided by the Commission and the Courts establishing the fundamental law favorable to applicant involved in this application. And yet at the instant hearing and in the pleadings briefs, etc., filed by protestants, their main burand claiming that they are wrong in all of their decisions. This in turn, of course, occupied a great deal of the time and attention of the applicant and the intervener in having to meet these time consuming, immaterial objections which have been repeatedly made by these protestants after so many decisons to the contrary. Naturally complaint cannot made against protestants stating positions and taking exceptions to the rulings of Examiners, Joint Boards, Divisions and the Commission, to say nothing about the Courts, but haven't we gone a considerable extent in the instant proceedings? Certainly every one has been compelled to exercise a great deal of patience and restraint in meeting the unjust criticisms not once but dozens of times.

Many other frivolous and unsound criticisms are leveled. The Division is charged with applying improper tests; a statement that a railroad gets a certificate simply for the asking; a charge that the order is wholly without any support in the record; that "it makes us wonder whether the division has not approved the order without noting what it has said." Division 5 is charged with wholly ignoring one of their controlling points, in passing it off with a shrug of their shoulders. A charge is made on page 10 that "the Commission has substituted its private belief and personal conclusions for evidence, and not troubling to examine the record." Then on page 17 a final thrust is made at the decision by charging Division 5 with having "gone overboard."

1205 Applicant's Shipper Wiffielses

In applicant's brief filed August 21, 1942, herein it made a thorough review and concise narrative of all of the evidence. This

is found in applicant's brief at pages 7 to 103.

At pages 7 to 43, of the brief both inclusive and pages 66 to 69, is set forth in narrative form both direct examination and cross-examination, the testimony of three company witnesses who testified for the applicant as follows: Mr. E. M. Christie and J. S. Symmes representing the Pennsylvania Railroad and Mr. J. P. McArdle representing the applicant.

At pages 43 to 66 of the brief, is set forth a narrative of the direct and cross-examination of applicant's shipper witnesses.

And then we gave a review of protestants' witnesses; both direct

and cross-examination in the brief from pages 70 to 103.

We believe that a casual reading of this review of the evidence contained in our brief will answer each and every one of the criticisms leveled at Division 5 in their analysis of the evidence. There are quite a number of places in the petition where protestants claim there was not a line of evidence on certain propositions. Each and all of these criticisms are baseless. In the arguments of protestants in their petition, at no time do they discuss the matters which were brought out on cross-examination of protestants witnesses, and their criticism does not take into consideration any

of the exidence which was developed by protestants in their direct examination, which was favorable to the applicant; certainly they do not take into consideration any of the cross-

examination of protestants witnesses developed by applicant. This case cannot be decided by just picking out the direct examination of certain witnesses and ignoring all of the rest of the record, Time after time protestants claim there was not a line of testimony covering certain portions of the report. As stated before, we believe a casual reading of this analysis in our brief of the evidence alone will answer the criticisms of protestants.

On page 15 of the petition protestants want the Commission to understand that all of the testimony of the shipper witnesses of applicant amounted to nothing and that the "benefit" which were testified to by these witnesses should be limited to that of four witnesses which are claimed by protestants to be controlling, alone. Protestants claim that the substance of this testimony is to the effect that the first shipper witness testified that generally speaking the railroad service was satisfactory, that the second witness stated that he was satisfied, that the third witness stated that the service was generally satisfactory and the fourth that the present service of the railroad was adequate. This criticism of course is not well founded.

The impression would be left by protestants with the Commission that the Commission should pay attention to only the testimony of the four shipper witnesses of the applicant who actually testified in person and that the stipulation entered 1207 into by all parties of record regarding the 37 witnesses of the applicant who were at the hearing and whose stipulations were entered of record should be disregarded and should be placed in the category of "also attended." In the analysis of the stipulation regarding the 37 witnesses protestants analyzed and discussed their testimony without taking into regard the stipulation regarding the agreed portion of the stipulation pertaining to the cross-examination of these 37 witnesses.

We made a careful examination of the testimony of all of the four witnesses of applicant and summarizes it in our brief. The names of these 37 witnesses together with their position and the company with which they are connected, with transcript reference is set forth in our brief at pages 59 to 63, and then at pages 63 and

64 is set forth a substance of the direct examination which is followed on pages 64 to 66 with a careful and minute summary of the cross-examination made by protestants of these 37 shipper witnesses of applicant.

For some reason or another in all of their discussions the protestants ignore this cross-examination of these 37 witnesses and they do not take it into consideration at any point in their brief,

exceptions, or petition.

The stipulation at the hearing was to the effect that the substance of the cross-examination of the four shipper witnesses who actually testified should be considered the cross-examination of the 37 witnesses who testified by stipulation.

There seems to be the opinion on the part of protestants that this testimony of these 37 witnesses should be treated 1208 lightly and should not be given the same consideration as

the other witnesses, who testified on behalf of the parties. This, of course, is an erroneous attitude. The entering of the stipulation was as much of a benefit to the protestants as it was to the applicant in the saving of time. Only two days were allotted at Indianapolis for this hearing and by the time we had examined the first three company witnesses and the first four shipper witnesses for the applicant it became the practical proposition as to what we should do regarding the testimony of the other shipper. witnesses and we did what is commonly and ordinarily done under such circumstances, we entered into a stipulation regarding the evidence of these witnesses in attendance who did not have the opportunity to be personally examined. Incidentally, the protestant witnesses who testified at Lansing at the adjourned hearing by stipulation should be considered the same as any other witnesses who testified on behalf of the protestants. We have not, and we do not intend, to speak disparagingly of those shipper witnesses who testified for the protestants by stipulation.

On page 15 of the petition, protestants stated that none of the applicant's witnesses testified that the proposed service would be

of any advantage.

Witness number one, Claude H. Caton (applicant's brief pages 43 to 47) gave testimony which was conclusive along this line and at variance with the statements of protestants. See page 48:

"If this particular rail-truck service is instituted and it 1209 will expedite the movement of our Pennsylvania Railroad

freight 24 hours, it will be of benefit in our business (Tr. 312); and it will serve the convenience and necessity of our particular business; it will help us (Tr. 312). We would like to have that service (Tr. 312-313)"

and then in the transcript, page 319, this witness stated that the service of the railroad and all of the other truck lines was adequate "Unless they could improve on the service in some way or another, of course."

Witness number two, M. L. Burton, testified among other things that they make shipments to all of the 48 States over the Pennsylvania Railroad. We specifically refer to page 50 of our brief of the direct examination of this witness wherein he said,

"If this particular service is instituted and if they thereby give us an expedited service of 24 hours through this rail-truck service of the Pennsylvania Railroad and The Willett Company, that will serve the convenience and necessity of our company, (Tr. 351-352). We are confronted with the fact that we have competition; we are located in Michigan and our competition is located in the east and around through Illinois; and 24 hours of course will make a day, and nowadays people want things when they want them. They do not want to wait, and if you can get our shipments in 24 hours quicker, why that is going to help our business. The company is going to demand that I get them there the quickest way I can, and the customers are going to demand that I get them out the quickest way I can, and we would like to have this expedited service (Tr. 354)."

And then as a part of this all consuming and devastating cross-examination claimed by protestants, to contain the "knock-out punch" we refer to pages 52 and 53 of our brief for the beneficial testimony to applicant developed by protestants,

"My understanding of this proposed service is the Pennsylvania - Railroad will pull the freight on the railroad as far as it can and then when it gets to a place where it is slowed up, like

train runs one day north and the next day south, the truck will speed up that service because we will get one truck north and one truck south every day rather than every other day (Tr. 364). As far as our interest is concerned in this proposed service, it is that we need a 24-hour speeding up of the service (Tr. 367). In other words, we do not care whether they actually get it in there late, so that it could not reach the train, to make the connection, or not, but if they will speed up the service so far as the movement of any particular shipment is concerned, that is what we request (Tr. 368)."

"We are interested in seeing the railroads speed up their service (Tr. 378). Even if the supposed truck out of Kalamazoo had nothing to do before it got to our city, even if it made the 4:00 o'clock schedule it would not pass us on that day because the truck

would drop the freight at the railroad station and we would pick it up at the railroad station the next morning (Tr. 370)."

"The Pennsylvania Railroad told us they would speed up our shipments reaching Plainwell by 24 hours and that is all we are

asking for (Tr. 391)."

It is well to keep in mind that this cross-examination becomes part of the cross-examination of all of the 37 shipper witnesses stipulated on. Also keep in mind that protestants claim that there is not a line of testimony in the record showing that any of these shippers have anything more than a desire for the service, that they do not need it, and that it will not be, of any benefit to them, and their claim is that about the only thing is a wish or a desire. This claim, of course, along with so many of the others, is absolutely baseless.

The testimony of our shipper witness number three, Edward F. Zinkel, is summarized in our brief at pages 53 to 56. On page

55 of our brief we quote from this witness' testimony:

"If this service is rendered it will serve the convenience and necessity of our business and we would like to have it instituted (Tr. 399-400)."

1211 And on the page as another example of protestants withering cross-examination, which actually is of benefit to the applicant, and which must be considered as a part of the cross-examination of the 37 shipper witnesses of applicant, is the following which we set forth on page 55 of our brief:

"The present service I am receiving from the Pennsylvania

Railroad is not satisfactory, it is too slow (Tr. 405)."

And yet protestants would have the Commission believe that every one of the witnesses of the applicant were satisfied entirely with the service of the Pennsylvania Railroad.

The testimony of applicant's shipper witness No. 4, George M. McDowell, is set forth in our brief at pages 56 to 58; this witness

testified that

"If this service is instituted as explained to me and as I have indicated, it will serve the convenience and necessity of my business and would like to have this truck service instituted, and if it is instituted will continue to use the service of the Pennsylvania Railroad (Tr. 417-418)."

The testimony of these 41 shipper witnesses completely established a need for the proposed service, a desire for it, the value and reason for wanting it, and definite statement that they would

use it if it were instituted.

In considering the findings in the order of Division 5, it is proper and essential that we take into consideration the testimony of all of the witnesses who testified at the hearing. In light of what has been said, and the analysis made of the testimony, isn't it rather far fetched, to say the least, to make a claim that the testimony was undisputed and all in favor of the protestants?

1212

Auxiliary and Supplemental

Protestants object to that part of the order providing that the service shall be

"Auxiliary to and supplemental of rail service in the transpor-

tation of less than carload Freight."

Protestants at page 12 of their petition find fault with this phrase. They call this a "high sounding" phrase which has never been defined at any time in this or any other record which they have been able to read. They then criticize this order of Division 5 and say:

"This as well as all other rail decisions, have depended almost entirely on some marvelous benefits that are supposed to flow from service which is auxiliary to or supplemental' of railroad

service."

The company witnesses testified at length in describing in detail the manner in which this auxiliary and supplemental service was operated. There is no mystery to the meaning of such ordinary words as "auxiliary" and "supplemental," and it would seem that it was frivolous to make a criticism of this order by reason of the fact that it describes the service as being "auxiliary to and supplemental of." Auxiliary, among other things, is defined by Webster as being "conferring aid or support; helping; aiding; assisting; subsidiary." Supplemental is defined by Webster, among other things, to be "an addition to anything, by which it is made more full and complete; additional."

The applicant and intervener in their respective briefs have cited and quoted from so many decisions which have gone into

this matter of auxiliary and supplemental service so com-1213 pletely that we are not going to take more space at this time to discuss this criticism of protestants, except to finally say the criticism is unjust and frivolous.

Tonnage

At the hearing Mr. E. M. Christie, witness for applicant presented an exhibit which elaborately went into the question of tonnage over each and all of the routes sought by the application. On direct examination and cross-examination he amplified this tonnage in detail. Counsel for protestants were confused, or were trying to confuse the issues by using the terms "less than

carload freight" and "trucktoad freight" interchangeably. They tried to have the witness break down his tonnage in truckloads, and to get him to prepare for them an exhibit different in type, and form than the one which was presented. A great deal of time was consumed at the hearings in these unjust requests upon the part of protestants to secure additional data from Mr. Christie in the nature of exhibits. Complaint was made that the breakdown of tonnage was not made minutely by each town as was the desire on the part of the protestants. Complaint is made on page 13 of the petition by protestants that no comment was made in the order regarding this situation. No comment was necessary. The ruling of the Joint Board at the time of the hearing was entirely within the rules. It is to be remembered that at the hearing applicant informed protestants that if they were willing to pay for the expense in preparing additional exhibits of the type and kind they desired, he would gladly secure the

1214 same for them, but they were unwilling to meet the expense.

Now they claim that the responsibility was upon the part of applicant to spend hundreds of dollars in preparing exhibits for

their use and benefit. Mr. Christie testified at great length and

in detail regarding the question of tonnage.

The odd part about this entire situation is that with one breath the protestants claim that some damage will be sustained by them if this application is granted. The only thing that is attempted to be handled by the applicant upon the granting of a certificate herein is less than carload freight mostly to intermediate cities and towns along these routes. It is a matter of common knowledge that the intermediate towns have very inadequate service; that old line truck companies have very few peddle runs serving the small communities. The protestants witnesses upon the stand testified to the fact that they had practically no package freight for these small towns along these routes. How is it possible then for them to have any complaint when the railroad is not trying to handle protestants small amount of L. C. L. freight, but is trying to secure one of its own subsidiaries to handle L. C. L. freight which it already has. This business is trying to preserve?

Complaint of the protestants in this regard is unfounded and if they had been willing to pay for the exhibit it would have been

furnished them.

Savings and Economy

At one place on page 14 and another on page 15 of the petition, protestants complain that the reference in the order to savings of switching expense is erroneous. They claim that the reference to saving on switching is "plainly a case of inventing evidence" and that there is some vague testimony regarding this question only. On pages 14 and 15 they claim that the "elimination of expense to the railroad is not material in this case anyway."

This criticism is in line with the position taken by the protestants at the hearing in which they objected to any testimony

along this line, and were over-ruled.

In our briefs and replies we have gone to great length in setting forth quotations from many of the cases granting authority in like situations, and in practically every one of them there is set forth in the quotation, reference to the holding of the Commission that one of the elements in these cases is the savings in expenses to the railroad. This is a vital point in this class of cases. It has been admitted in evidence in all of them as it was admitted in the instant case.

Mr. Christie testified "there will be a reduction in operating expenses to the Pennsylvania Railroad by reason of the rail-truck operations (Tr 522)." These savings were described by him as follows: Savings in car-miles, overtime, locomotive expenses, stowing of freight, yard switching, second handling of freight,

box cars used, and engine expense.

In their petition, protestants attempt to take the position that this savings is not material, and that there was no showing that there would be a complete elimination of switching. There was

no claim by Mr. Christie in his testimony that there
1216 would be a complete elimination of switching charges, or a
total elimination under any of the other items in his testi-

mony. His testimony was to the effect on switching that "by reason of the elimination of the waycar on the local freight train there would be a savings in operating expenses by reason of waycars being taken off." He described in detail the operations of a local freight train with a waycar on it.

Under the heading "Economy of Operations" we discussed this subject in detail in our reply of December 16, 1942, when a large number of quotations from authorities were set forth at pages 75 to 80.

Expedite

On page 15 of the petition protestants claim that their devastating cross-examination showed that the expedition of freight from 24 to 48 hours was only a guess, and that the testimony of their expert railroad men completely contradicted the testimony of the applicant's company witnesses.

In light of the fact that the Commission has had before it hundreds of cases of this type, and has made extensive investigations into this type of service over a long period of time, it therefore

understands the operations of railroad trains and the movement of freight in and out of railroad freight houses in cities such as Fort Wayne, Indiana, and Grand Rapids, Michigan. It understands how the railroad trains are "worked" in such places, and knows that it is a common practice among railroads to lose 24 to 48 hours

in handling freight at freight houses in this type of service.

1217 There is the temptation to review the evidence in this case in detail, but in light of the knowledge which the Commis-

sion has, we will refrain, and refer to the record.

Suffice it to say, however, Mr. Christie, who is an experienced railroad employee and executive of many years standing testified to these matters in detail, in showing how the freight trains operate into such cities as Fort Wayne and Grand Rapids, and how the freight cars are handled at the freight houses in the transfer. of freight at such points and in the necessary loss of approximately 24 hours and in some instance 48 hours and more. He detailed the instances where 48 hours and more are lost by reason of tri-weekly operations. He also explained in detail how the operation of this truck on the schedules proposed would save from 24 to 48 hours or more. This testimony is absolutely undisputed except for one of the witnesses of protestants. The reading of his testimony demonstrates without the necessity of cross-examination that he knew nothing about the operation of the railroad, and it is apparent that this view is taken by the Examiner, the Board members and Division 5.

There are many places in Mr. Christie's testimony where he

discussed this question.

Applicant's Proposed Service Will Serve a Public Need and Be in the Public Interest

We have hereinbefore referred to the objections of protestants in their petition and have made reference to them.

218 However we specifically refer the Commission to applicant's reply of December 16, 1942, herein at pages 56 to 65

wherein we cited and discussed quite a number of decided cases

on the point.

We also refer to the reply of the same date of intervener The Pennsylvania Railroad Company herein. Intervener's said exceptions are not lengthy; but the discussion is pertinent and a large number of cases are cited on all of the propositions referred to herein.

New Operation

Complaint is made by protestants in their petition that by Division 5's order it assumes that this type of operation is some "new or strange animal."

We have discussed this matter at length in our reply of December 16, 1942, at pages 65 to 69 wherein we have made comment and cited pertinent cases.

Unity of Control to Expedite

In our reply of December 16, 1942 under this heading we discussed this subject, pages 69 to 71.

Adequate Motor Carrier Service Available

In our reply of December 16, 1942, at pages 71 to 75 we discussed this matter with citations of authority.

This is the main point of complaint by protestants. This seems to be the main bone of contention. We will make reference under the subject of "Jurisdiction" to this point later herein, to the effect

that the commission has no jurisdiction in cases of this type 1219 to compel coordinated service between carriers by rail and carriers by motor vehicle, and that such can only be accom-

plished through voluntary cooperation.

The record is ample and abundant on the proposition that for the Pennsylvania Railroad to have it various lines in Michigan properly covered by protestants it would require a large number of them to perform the service, and each of them would have to secure additional authority before they could serve all of the towns

along the railroad in Michigan.

Protestants lose sight of the fact that the applicant, The Willett Company of Indiana, Inc., is an existing motor carrier the same as the protestants. They seem to lose sight of the fact that the Penn. sylvania Railroad has this type of service in operation blanketing its operations west of the Indiana-Ohio State Line in Indiana and Illinois and to Louisville, Ky., and that all of that operation is being carried on under authority of this Commission, by the applicant. None of the applicants are performing any of this type of service for intervener. The applicant is engaged exclusively in this type of business; the protestants are not. Its entire operation is keyed to one type of service, namely transporting for the Pennsylvania Railroad. It understands the problems of the Pennsylvania Railroad. It has had long years of experience at it. It is fundamental that applicant can handle the business more economically than a large number of competing motor carriers. As testified to by the applicant's witnesses the Pennsylvania

Railroad desires this service applied for herein to be handled 1220 by the applicant over these seven (7) routes applied for in conjunction with the other twenty-five (25) routes now operated by applicant for it making one entire unified opera-

tion under one company. It has eighteen reasons why it desires his type of service to be handled by the applicant, to which the protestants objected. The objection was sustained. Clearly this ruling of the Joint Board was erroneous as this type of testimony has been admitted in every other case that we have presented. And now the protestants are complaining that the intervener has no reasons for employing the applicant over the other existing motor carriers. They themselves objected to the introduction of evidence which was clear and conclusive along that line and which was made clear by an offer of proof by applicant at the hearing.

It requires no expert testimony on any point to establish the proposition in our judgment that this applicant in conjunction with its other operations over the twenty-five (25) routes described in the testimony blanketing the Pennsylvania Railroad in Indiana, Illinois and Kentucky can be operated more efficiently, economically and satisfactorily not only to the railroad but to the patrons

of the railroad.

Commission.

Furthermore the railroad is of the opinion that instead of being a benefit to it if it were compelled to use the services of the competing motor carriers, it would be a decided detriment. This was demonstrated by one of protestants' witnesses who stated that they were under contract with the Pere Marquette to render a serv-

ice of this type over a small route for the Pere Marquette 1221 in Michigan. This witness let slip a remark to the effect that they had to notify their solicitors not to attempt to solicit the freight of the Pere Marquette for themselves. Here we quote from his testimony: "But I have talked to the drivers and we have got to be very careful about soliciting freight away from the Pere Marquette Railroad (Tr. 1014)." All of the objections of protestants along this line are frivolous and not in line with the decisions in the many other cases decided by the

Here is one of the most important bits of testimony in this case. It demonstrates the actual danger to the railroad when it intrusts its freight to a competitor—whether rail or truck. Of course the truck operator had to instruct his agents not to take away the business of this railroad and keep it for itself. The Pemsylvania Railroad does not desire to have its freight taken away from it by competing truck lines in this manner. When it employs its subsidiary, the applicant, it is absolutely safe—its business is not taken away from it.

We call attention to our reply of December 16, 1942 where we cited and discussed a number of important cases, at pages 80 to 84 under the heading "Improved service and division of traffic."

Necessary To Deal With Several Independent Motor Carriers

Under this heading we discussed this subject in our reply of December 16, 1942, at pages 84 to 87.

Duplicate Service

In our reply of December 16, 1942, at pages 92 to 96 we 1222 discussed this subject in detail.

Jurisdiction

In our reply of December 16, 1942, at pages 104 and 105 we discussed this subject and cited decisions thereunder with quotations. We also suggest the reading of intervener's reply of December 16, 1942, with the numerous decisions set forth therein on the general subject.

Convenience and Necessity

In our reply of December 16, 1942, at pages 99 to 103 under this heading we discussed at length with citations and quotations, other decisions of the Commission. We also commend the reading of intervener's reply of December 16, 1942.

Protestants object to the standard set forth in all of these decisions on this subject. They claim that the decisions are all wrong. We do not believe there is anything further that we need say along this line except that the entire position of protestants is groundless. They have not cited a single decision which is contrary to the hundred or more decisions in conformity with the rule followed by the Commission in granting applicants authority in this and in other like cases.

Reopening

Protestants have made request for the reopening of this case. In no instance have they followed any of the rules of the Commission pertaining thereto. They have had every opportunity to produce witnesses and introduce testimony. The original

hearing was held at Indianapolis in February, 1942.

The hearing was adjourned until sometime in June of the same year, and during the several menths interval they had all opportunity to develope their evidence. They had a hearing of two days at Lansing on June 11 and 12, 1942, at which time they presented their witnesses. They have made no showing at

ay place that they have additional testimony, nor have they set at what the substance of that testimony would be. At the hearing they attempted to impeach the testimony of witnesses in a way, so authorized by the Rules of Evidence. Their offer of proof-ms inadequate and meaningless. Every opportunity was given rotestants to bring in their testimony and be heard. This case as been delayed long enough: We respectfully submit that the operations of the protestants are groundless.

Oral Argument

Oral argument has been requested by the protestants at each opportunity they have had to discuss and bring this matter. Protestants have in no wise complied with the rules of the Commission in presenting their pleas. Nothing could be gained in our judgment by another delay for the purpose of oral argument. The briefs, replies and petitions have been amply supported by careful malysis on their side, and what could be gained, except delay? The protestants in their petition "want to point out as clearly as possible a great many facts and arguments that individual members have not had brought to their attention directly." This is a novel reason for wanting oral argument and delay.

Another reason advanced by protestants is "the whole 1224 future of the motor carrier industry is involved in the doctrine established by this and related cases." This has not been reflected in the evidence in any of the cases before the Commission and the Commission has gone to unusual length in

protecting independent motor carriers.

Then the final plea on oral argument is to the effect that "many

things the printed word makes difficult to get across.";

In all seriousness, of course, the applicant and intervener have no objection to oral argument in this or any other case. We do feel, however, that it is an imposition to make this request in the arein matter after all of the delays which we have had and in light of the long line of decisions governing the law in these cases.

This request should be overruled.

CONCLUSION

Wherefore, Applicant and intervener respectfully say that each and all of the matters set forth in the petition herein are unfounded and without merit and should therefore be overruled. Applicant and intervener respectfully pray that its application be granted

in its entirety and that a certificate of convenience and necessify as prayed for be granted to applicant.

Respectfully submitted.

THE WILLETT COMPANY OF INDIANA, INC., HARRY E. YOCKEY,

By Harry E. Yockey, Its Attorney.

THE PENNSYLVANIA RAILROAD COMPANY, OSCAR LINDSTRAND,

By Oscar Lindstrand, Its Attorney.

EARL W. MUNSHAW, KIREWOOD YOCKEY,

of Counsel.

December 19, 1943, 1250 Consolidated Bldg., Indianapolis 4, Indiana.

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon all parties of record in the instant proceedings by mailing first class, postage prepaid, a copy thereof, properly addressed to each such party.

HARRY E. YOCKEY, Harry E. Yockey, Counsel for Applicant.

Dated at Indianapolis, Indiana, this 19th day of December 1943.

1226 At a General Session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 8th day of February, A. D. 1944.

No. MC,2815 (Sub No. 6)

THE WILLETT COMPANY OF INDIANA, INC.

EXTENSION, FORT WAYNE-MACKINAW CITY, MICHIGAN

Chicago, Illinois .

Order

Upon consideration of the record in the above-entitled proceeding, and of petitions, dated November 11, 1943, filed jointly by Interstate Motor Freight System and Parker Motor Freight, protestants, for reopening, reconsideration, further hearing, and oral argument; and good cause appearing:

It is ordered, that said petition be, and it is hereby denied.

By the Commission.

SEAL

W. P. BARTEL, Secretary.

In the Supreme Court of the United States.

October Term, 1944

No. 507

Statement of points to be relied upon and designation of the record to be printed

Filed October 14, 1944

Come now the appellants and say that they will rely upon the points made in their assignment of errors in brief and oral argument before this Court on their appeal in the above-entitled cause. Appellants further state that the entire record in this cause as filed in this Court is necessary and should be printed to enable the Court to consider the points set forth above, except the following items in the appellants' praecipe for transcript of record: hems 2 and 8; and except item 3 of appellees' praecipe for additional parts of record.

Dated October 13, 1944.

DANIEL W. KNOWLTON, Chief Counsel,

Daniel H. Kunkel, Daniel H. Kunkel,

Attorney for Interstate Commerce Commission.

HARRY E, YOCKEY, KIPKWOOD YOCKEY,

For Willett Company of Indiana, Inc.

A. M. Donnan,

OSCAR LINDSTRAND,

H. Z. MAXWELL, JOHN DICKINSON,

For The Pennsylvania Railroad Company.

CERTIFICATE OF SERVICE

It is hereby certified that a copy of the above was served pon counsel for appellees by mailing the same to them addressed is follows: K. F. Clardy, 712 Olds Tower, Lansing, Mich.; Howell Ellis, 520 Illinois Building, Indianapolis, Ind.; Fred I. King, 1008 Old Fellows Building, Indianapolis, Ind.; Robert E. Des Roches, 12 Olds Tower, Lansing, Mich.; John S. Powell, 520 Illinois Building, Indianapolis, Ind.

Daniel H. Kunkel.

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In the Supreme-Court of the United States.

October Term, 1944

No. 508

Statement of points to be relied upon and designation of parts of record to be printed

Filed Oct. 21, 1944

Appellant United States of America, pursuant to Rule 13, paragraph 9, as its statement of the points on which it intends to rely, adopts those set forth in its assignment of errors heretofore filed, and designates for printing, as necessary to the consideration of the case, the entire record as certified and transmitted by the clerk of the district court.

Charles Fahy, Charles Fahy, Solicitor General,

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Supreme Court of the United States

Nos. 507 and 508-October Term, 1944

Order noting probable parisdiction

November 6, 1944

The statement of jurisdiction in these cases having been submitted and considered by the Court, probable jurisdiction is noted. [File endorsement on cover:] File No. 48960, 48961. D. C. U. S., S. INDIANA. Enter Daniel W. Knowlton. Term No. 507. Interstate Commerce Commission, The Willett Company of Indiana, Inc., and The Pennsylvania Railrond Company, Appellants vs. Harry A. Parker, doing business as Parker Motor Freight, Regular Common Carriers Conference of the American Trucking Associations, Inc., et al. Enter Solicitor General Term No. 508. The United States of America, Appellant, vs. Harry A. Parker, doing business as Parker Motor Freight, Regular Common Carriers Conference of the American Trucking Associations, Inc., et al. Filed September 26, 1944. Term No. 507 O. T. 1944, 508 O. T. 1944.

In the District Court of the United States for the Southern District of Indiana, Indianapolis Division

CIVIL ACTION No. 781

HARRY A. PARKER, DOING BUSINESS AS PARKER MOTOR FREIGHT, ET AL., PLAINTIFFS

UNITED STATES OF AMERICA, ET AL., DEFENDANTS'

JURISDICTIONAL STATEMENT BY DEFENDANT-APPEL-LANTS UNDER RULE 12 OF THE REVISED RULES OF THE SUPREME COURT OF THE UNITED STATES

The defendant-appellants respectfully present the following statement disclosing the basis upon which it is contended that the Supreme Court of the United States has jurisdiction upon appeal to review the final judgment or decree in the above-entitled cause sought to be reviewed.

A. STATUTORY PROVISIONS

The statutory provisions believed to sustain the jurisdiction are:

U. S. C., Title 28, Section 47a (Act of March 3, 1911, c. 231, sec. 210, 36 Stat. 1150; as amended by Urgent Deficiencies Act of October 22, 1913; c. 32, 38 Stat. 220).

U. S. C., Title 28, Section 41 (28) (Act of June 18, 1910, c. 309, 36 Stat. 539, as amended March

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3, 1911, c. 231, sec. 207, 36 Stat. 1148; October 22, 1913, c. 32, 38 Stat. 219).

U. S. C., Title 28, Section 44 (Act of October 22, 1913, c. 32, 38 Stat. 220; as amended by Act of February 13, 1925, c. 229, sec. 1, 43 Stat. 938).

U. S. C., Title 28, Section 47 (Act of October 22, 1913, c. 32, 38 Stat. 220).

U. S. C., Title 28, Section 345 (Act of March 3, 1891, c. 517, sec. 5, 26 Stat. 827; as amended January 20, 1897, c. 68, 29 Stat. 492; April 12, 1900, c. 191, sec. 35, 31 Stat. 85; April 30, 1900, c. 339, sec. 86, 31 Stat. 158; March 3, 1909, c. 269, sec. 1, 35 Stat. 838; March 3, 1911, c. 231, secs. 238, 244, 36 Stat. 1157; January 28, 1915, c. 22, sec. 2, 38 Stat. 804; February 13, 1925, c. 229, sec. 1, 43 Stat. 938).

B. THE STATUTE OF A STATE, OR STATUTES OR TREATY OF THE UNITED STATES, THE VALIDITY OF WHICH IS INVOLVED

The validity of a statute of a state, or of a statute or treaty of the United States, is not involved.

C. DATE OF THE JUDGMENT OR DECREE SOUGHT TO BE REVIEWED AND THE DATE UPON WHICH THE APPLICATION FOR APPEAL WAS PRESENTED

The decree sought to be reviewed was entered on June 30, 1944. The petition for appeal was presented and allowed on August , 1944. On the same day an assignment of errors was filed.

D. NATURE OF CAUSE AND RULINGS BELOW,

This is an appeal from a final decree of a specially-constituted three-judge District Court

of the United States for the Southern District of Indiana, Indianapolis Division, entered June 30, 1944, declaring an order of the Interstate Commerce Commission illegal and void and enjoining its enforcement. The order in question was entered by the Commission on September 25, 1943, in a proceeding known as The Willett Company of Indiana, Inc., Extension-Fort Wayne-Mackinaw City, Mich., Docket No. MC 2815 (Sub. No. 6), reported 42 M. C. C. 721. This proceeding was an application by The Willett Company for a certificate of public convenience and necessity under Sections 206 (a) and 207(a) of the Interstate Commerce Act. Authority was sought to inaugurate over seven specified routes a trucking service auxiliary to and supplemental of, the rail service of the Pennsylvania Railroad in the transportation of less-than-carload freight. Compare Thomson w. United States, 321 U. S. 19, 20, 21.

By its report and said order of September 25, 1943, the Commission found that the present and future public convenience and necessity required the proposed operation, subject to conditions designed to restrict it to a coordinated motor-rail service, and directed that an appropriate certificate issue. Subsequently a petition for reconsideration filed by protestants was considered and

¹ By agreement the issuance of the certificate was subsequently deferred pending the disposition of the proceeding in the District Court.

denied by the entire Commission by order dated February 8, 1944.

On February 21, 1944, suit to set aside this order, pursuant to the provisions of Section 41 (28) and Sections 43 to 48, inclusive, of Title 28 U. S. C., was filed by Harry A. Parker, doing business as Parker Motor Freight, a motor carrier protestant in the Commission proceeding. eral other motor carriers. The Regular Common Carrier Conference of the American Trucking Associations, Inc. and Motor Carriers Central Freight Association intervened as parties plaintiffs. The Interstate Commerce Commission, The Willett Company of Indiana, Inc., and The Pennsylvania Railfoad Company intervened as parties defendant. The case was submitted on final hearing on April 28, 1944, before a specially constituted three-judge court.

The substantial issue before the Court was whether the Commission had applied the proper legal criteria in reaching its determination that public convenience and necessity required the grant of the authority sought.

As of June 30, 1944, without filing any written opinion, the Court filed its special findings of fact and conclusions of law and entered its final decree enjoining the enforcement of the Commission's order. In so doing it found applicant had failed to meet the statutory requirements and that the Commission had failed to exact from the applicant, as a railroad subsidiary, the requisite

proof to establish public convenience and necessity and that there was no substantial evidence to support the order.

The question presented by this appeal is a substantial one in that it involves the validity of the basis upon which the Commission has acted in numerous applications involving the substitution of motor-truck service for local less-than-carload way freight service by rail carriers. A decision upon this issue is especially necessary to the proper performance of the Commission's administrative duties since it is now faced with a decision of the District Court for the Eastern District of Virginia which in a recent opinion, filed July 17, 1944, in American Trucking Association et al. v. United States, No. 285, sustained an order granting similar operating rights to the Scaboard Air Line Railway.

E. CASES SUSTAINING THE SUPREME COURT'S JURISDICTION ON APPEAL

United States v. Carolina Freight Carriers Corp., 315 U. S. 475.

Alton Railroad Co. v. United States, 315 U. S. 15.

Noble v. United States, 319 U. S. 88.

Crescent Express Lines v. United States, 320 U. S. 401.

Board of Trade of Kansas City v. United States, 314 U. S. 534.

Union Stock Yard Co. v. United States, 308 U. S. 213.

~United States v. Pan American Petroleum Corp., 304 U. S. 156.

United States v. American Sheet & Tin Plate Go., 301 U. S. 402.

United States v. Baltimore & Ohio R. R. Co., 293 U. S. 454.

Mississippi Valley Barge Co. v. United States, 292 U. S. 282.

F. DECREE AND FINDINGS OF FACT AND CONCLUSIONS OF LAW OF THE DISTRICT COURT

Appended to this statement is a copy of the findings of fact and conclusions of law of the District Court and a copy of decree of said court sought to be reviewed.

We, therefore, respectfully submit that the Supreme Court of the United States has jurisdiction of the appeal.

Dafed August 22, 1944.

DANIEL W. KNOWLTON, Chief Counsel,

DANIEL H. KUNKEL,

Attorney for Interstate Commerce Commission.

HARRY E. YOCKEY, KIRKWOOD YOCKEY,

For Willett Company of Indiana, Inc.

H. Z. MAXWELL,

for A. M. DONNAN,

H. Z. MAXWELL,

for OSCAR LINDSTRAND,

H. Z. MAXWELL,

for H. Z. MAXWELL,

H. Z. MAXWELL,

for John Dickinson,

For The Pennsylvania Railroad Company.

In the District Court of the United States of America for the Southern District of Indiana, Indianapolis Division

CIVIL ACTION No. 781

HARRY A. PARKER, DOING BUSINESS AS PARKER MOTOR FREIGHT, ET AL., PLAINTIFFS

v.

UNITED STATES OF AMERICA ET AL., DEFENDANTS

SPECIAL FINDINGS OF FACT

Pursuant to Rule 52 of the Rules of Civil Procedure, this Court now states its Special Findings of Fact:

I.

This is a suit brought under U. S. Code, Title 28, Chap. 2, Sec. 41 (28) and Sec. 43–48, inclusive, to set aside an order made September 25, 1943, by the Interstate Commerce Commission authorizing the issuance of a motor carrier certificate of convenience and necessity in a proceeding entitled The Willett Company of Indiana, Inc., Extension—Fort Wayne—Mackinaw City, Mich., Docket No. MC-2815 (Sub. No. 6). The plaintiffs in this suit are motor carriers who are competitors of the above-named applicant with respect to the operations authorized by the proposed certificate and associations of motor carriers.

II

An application was filed with the Interstate Commerce Commission by The Willett Co. of Indiana, Inc., a subsidiary of the Pennsylvania Railroad, on September 8, 1941, under the provisions of Section 207 (a) of Part II of the Interstate Commerce Act. This application was for authority to conduct seven separate operations on as many different routes paralleling the lines of the Pennsylvania Railroad from Fort Wayne, Indiana, to Mackinaw City, Michigan. Numerous competing motor carriers intervened and opposed the granting of the authority sought. Hearings were held and a proposed report was filed. ceptions and a Petition for Rehearing and Reconsideration were denied. Suit to set aside said order was filed on February 21, 1944. Answers were duly filed on behalf of the United States, the Interstate Commerce Commission; and intervenors. Argument was had and the cause submitted on final bearing on April 28, 1944. At the hearing, plaintiff introduced in evidence a certified copy of the record before the Interstate Commerce Commission. This was all of the evidence in the case.

III

The operations proposed are motor carrier operations which would be competitive with existing motor carrier service. The railroad, however, refused to make use of any of the existing lines.

The applicant's proof concerned an alleged improvement in railroad service. No proof was made or offered by the applicant or presented in evidence that present highway common motor carrier transportation service by duly certificated carriers operating in interstate or foreign commerce and serving the points proposed to be served by the applicant was or would be inadequate to serve the public need therefor. Proof, was presented before the Commission by the plaintiff and other protestants concerning the adequacy of existing common motor carrier service. There was no substantial evidence to prove public convenience and necessity.

CONCLUSIONS OF LAW

Upon the above and foregoing Special Findings of Fact, the Court now states its Conclusions of Law, as follows, to wit:

T

The Court has jurisdiction of the subject matter and of the parties in this cause of action.

H

The applicant did not meet the statutory, requirements and the Interstate Commerce Commission failed to exact from applicant, as a railroad subsidiary, the requisite proof to establish public convenience and necessity.

III

There was no substantial evidence to support the order of the Interstate Commerce Commission that public convenience and necessity requires the issuance to applicant of a certificate of public convenience and necessity authorizing operation by motor vehicle as a common carrier of property over the routes involved, and the order is, therefore, illegal and void and should be permanently enjoined.

SHERMAN D. MINTON,

Judge, U. S. Circuit Court of Appeals.

ROBERT C. BALTZELL,

Judge, United States District Court.

LUTHER M. SWYGERT, per R. C. B.,

Judge, United States District Court.

Dated this 30th day of June, 1944.

In the District Court of the United States for the Southern District of Indiana, Indianapolis Division

CIVIL ACTION No. 781

HARRY A. PARKER, DOING BUSINESS AS PARKER MOTOR FREIGHT, ET AL., PLAINTIFFS

UNITED STATES OF AMERICA, ET AL., DEFENDANTS

DECREE

This cause coming on now to be finally heard by the Court, and the parties appearing by their respective attorneys, and the Court having heard the evidence and the argument of counsel and being sufficiently advised in the premises, now, pursuant to Rule 52 of the Rules of Civil Procedure, signs and files herein its special findings of fact and states its conclusions of law thereon, which said special findings of fact and conclusions of law are ordered by the Court filed and made a part of the record in this cause, all of which is now done.

by the Court that the order made and entered by the Court that the order made and entered by the defendant, Interstate Commerce Commission, as of September 25, 1943, in its Docket No. MC 2815 (Sub No. 6), entitled The Willett Company

of Indiana, Inc., Extension—Fort Wayne—Mackinaw City, Mich., complained of in the complaint, is illegal and void, and the defendants, United States of America and Interstate Commerce Commission, and their officers, agents, servants, employees, and attorneys, and all those persons in active concert or participation with them, who receive actual notice of this order by personal service or otherwise, should be and they are hereby permanently enjoined and prohibited from enforcing or attempting to enforce the same in any manner.

Dated this 30th day of June, 1944.

SHERMAN D. MINTON,
Judge, U. S. Circuit Court of Appeals.
ROBERT C. BALTZELL,
Judge, U. S. District Court.
LUTHER M. SWYGERT,
Judge, U. S. District Court.

In the District Court of the United States for the Southern District of Indiana, Indianapolis Division

CIVIL ACTION No. 781

[Filed Aug. 25, 1944. Albert C. Sogemeier, Clerk]

HARRY A. PARKER, DOING BUSINESS AS PARKER MOTOR FREIGHT, ET AL., PLAINTIFFS

UNITED STATES OF AMERICA, ET AL., DEFENDANTS

JURISDICTIONAL STATEMENT BY DEFENDANT-APPEL-LANT, UNITED STATES OF AMERICA, UNDER RULE 12 OF THE REVISED RULES OF THE SUPREME COURT OF

THE UNITED STATES

The defendant-appellant, United States of America, respectfully presents the following statement disclosing the basis upon which it is contended that the Supreme Court of the United States has jurisdiction upon appeal to review the final judgment or decree in the above-entitled cause sought to be reviewed.

A. STATUTORY PROVISIONS

The statutory provisions believed to sustain the jurisdiction are:

U. S. C., Title 28, Section 47a (Act of March 3, 1911, c. 231, sec. 210, 36 Stat. 1150; as amended

by Urgent Deficiencies Act of October 22, 1913; c. 32, 38 Stat. 220).

U. S. C., Title 28, Section 41 (28) (Act of June 18, 1910, c. 309, 36 Stat. 539, as amended March 3, 1911, c. 231, sec. 207, 36 Stat. 1148; October 22, 1913, c. 32, 38 Stat. 219).

U. S. C., Title 28, Section 44 (Act of October 22, 1913, c. 32, 38 Stat. 220; as amended by Act of February 13, 1925, c. 229, sec. 1, 43 Stat. 938).
U. S. C., Title 28, Section 47 (Act of October 22)

22, 1913, c. 32, 38 Stat. 220).

U. S. C., Title 28, Section 345 (Act of March 3, 1891, c. 517, sec. 5, 26 Stat. 827; as amended January 20, 1897, c. 68, 29 Stat. 492; April 12, 1900, c. 191, sec. 35, 31 Stat. 85; April 30, 1900, c. 339, sec. 86, 31 Stat. 158; March 3, 1909, c. 269, sec. 1, 35 Stat. 838; March 3, 1911, c. 231, secs. 238, 244, 36 Stat. 1157; January 28, 1915, c. 22, sec. 2, 38 Stat. 804; February 13, 1925, c. 229, sec. 1, 43 Stat. 938).

B. THE STATUTE OF A STATE, OR STATUTES OR TREATY OF THE UNITED STATES, THE VALIDITY OF WHICH IS INVOLVED

The validity of a statute of a State, or of a statute or treaty of the United States, is not involved.

C. DATE OF THE JUDGMENT OR DECREE SOUGHT TO BE REVIEWED AND THE DATE UPON WHICH THE APPLI-CATION FOR APPEAL WAS PRESENTED

The decree sought to be reviewed was entered on June 30, 1944. The petition for appeal was presented and allowed on August 25, 1944. On the same day an assignment of errors was filed.

D. NATURE OF CAUSE AND RULINGS BELOW

This is an appeal from a final decree of a specially constituted three-judge District Court of the United States for the Southern District of Indiana, Indianapolis Division, entered June 30, 1944, declaring an order of the Interstate Commerce Commission illegal and void and enjoining. its enforcement. The order in question was entered by the Commission on September 25, 1943, in a proceeding known as The Willett Company of Indiana, Inc., Extension-Fort Wayne-Mackinaw City, Mich., Docket No. MC 2815 (Sub. No. 8), reported 42 M. C. C. 721. This proceeding was an application by The Willett Company for a certificate of public convenience and necessity under Sections 206 (a) and 207 (a) of the Interstate Commerce Act. Authority was sought to inaugurate over seven specified routes a trucking service auxiliary to and supplemental of, the rail service of the Pennsylvania Railroad in the transportation of less-than-carload freight. Compare. Thomson v. United States, 321 U.S. 19, 20, 21.

By its report and said order of September 25, 1943, the Commission found that the present and future public convenience and necessity required the proposed operation, subject to conditions designed to restrict it to a coordinated motor-rail service, and directed that an appropriate certifi-

cate issue.* Subsequently a petition for reconsideration filed by protestants was considered and denied by the entire Commission by order dated February 8, 1944.

On February 21, 1944, suit to set aside this order, pursuant to the provisions of Section . 41 (28) and Sections 43 to 48, inclusive, of Title 28 U. S. C. was filed by Harry A. Parker, doing business as Parker Motor Freight, a motor carrier protestant in the Commission proceeding. eral other motor carriers, The Regular Common Carrier Conference of the American Trucking Associations, Inc., and Motor Carriers Central Freight Association intervened as parties plaintiff. The Interstate Commerce Commission, The Willett Company of Indiana, Inc., and The Pennsylvania-Railroad Company intervened as parties defendant. The case was submitted on final hearing on April 28, 1944, before a specially constituted three-judge court. On June 30, 1944, without filing any written opinion, the Court filed its special findings of fact and conclusions of law and entered its final decree enjoining the enforcement. of the Commission's order. In so doing it found applicant had failed to meet the statutory requirements and that the Commission had failed to exact from the applicant, as a railroad subsidiary, the requisite proof to establish public convenience and

^{*}By agreement the issuance of the certificate was subsequently deferred pending the disposition of the proceeding in the District Court,

necessity and that there was no substantial evidence to support the order.

Substantial and important questions are presented by this appeal, relating to the proper construction of Section 207 of the Interstate Commerce Act, and the proper statutory standards to be applied by the Commission in passing upon applications for certificates of public convenience and necessity under that provision of the Act. Before the District Court plaintiss made two principal contentions, which the Court appears to have adopted: (1) That the Commission based its decision solely on the fact that the railroad would benefit from the substitution of motor carrier service for its existing rail service and that the Commission thus employed a test of railroad convenience and necessity in lieu of the proper test under the statute of "public convenience and necessity"; and (2) that "public convenience and necessity" in this statute connotes absolute necessity, so that new operations cannot lawfully be authorized where existing operators could take gare of the need. While we agree that the Commission could not have applied a test of railroad convenience and necessity, we, nevertheless, think it is clear that the Court was clearly wrong in . accepting plaintiffs' contentions. We think it is plain, first, that the Commission did not base it's decision on mere railroad convenience, or depart from the usual standard of public convenience and necessity. Thus, not only does the Commission's

report refer to abundant shipper testimony in support of this new service, but the report also states (42 M. C. C. 721, 726) with respect to the proposed service:

It is a new form of service utilizing both rail and motor-carrier transportation to advantage and in such a way as to render a merchandise service which is much less expensive and at the same time more expeditious and more convenient and generally satisfactory to the public served. [Italics supplied.]

Also, just as it has traditionally done in the more usual case where the applicant is not a railroadcontrolled motor carrier, the Commission here specifically considered the effect of the new service upon existing motor carriers and concluded that it did not appear that the new service would be directly competitive with, or unduly prejudicial to, the operations of any other motor carrier. Secondly, it is equally clear that the statutory test is not one of absolute necessity. For this Court has recognized that new service may be authorized for the very purpose of providing the public with the benefits of competition, and also that if additional service is necessary the Commission is under no obligation to require existing carriers to improve their service before authorizing the entry of a new carrier into the field. Chesapeake de Ohio Ry. Co. v. United States, 285 U. S. 35, 41-43; Davidson Transfer & Storage Co. v. United

States, 42 F. Supp. 215, 219 (D. C. E. D. Pa.), affirmed per curiam, 317 U. S. 587. The substantiality of the issues here is also indicated by the fact that on July 17, 1944, a three-judge District Court for the Eastern District of Virginia in American Trucking Associations, Inc. v. United States, No. 285, sustained a Commission order granting a certificate to another railroad to engage in somewhat similar motor carrier operations. Some of the present contentions, as well as others, were also made in that case.

E. CASES SUSTAINING THE SUPREME COURT'S JURISDICTION ON APPEAL

United States v. Carolina Freight Carriers Corp., 315 U. S. 475.

Alton Railroad Co. v. United States, 315 U. S. 15.

Noble v. United States, 319 U. S. 88.

Crescent Express Lines v. United States, 320 U. S. 401.

Board of Trade of Kansas City v. United States, 314 U. S. 534.

Union Stock Yard Co. v. United States, 308 U. S. 213.

United States v. Pan American Petroleum Corp., 304 U. S. 156.

United States v. American Sheet & Tin Plate Co., 301 U. S. 402.

United States v. Baltimore & Ohio R. R. Co., 293 U. S. 454.

Mississippi Valley Barge Co. v. United States, 292 U.S. 282.

F. DECREE AND FINDINGS OF FACT AND CONCLUSIONS OF LAW OF THE DISTRICT COURT

Appended to this statement is a copy of the findings of fact and conclusions of law of the District Court and a copy of decree of said Court sought to be reviewed.

The United States of America, therefore, respectfully submits that the Supreme Court has jurisdiction of the appeal.

Dated August 24, 1944.

CHARLES FAHY,

Solicitor General.

WENDELL BERGE,

Assistant Attorney General.

ROBERT L. PIERCE, EDWARD DUMBAULD,

Special Assistants to the Attorney General.

B. Howard Caughran,
United States Attorney.

(CLERK'S NOTE.—The findings of fact, conclusions of law and decree are printed as an appendix to the jurisdictional statement in the case of *I. C. C. et al.*, v. *Parker*, etc., et al. No. 507, October Term, 1944, and are not duplicated here.)

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In the Supreme Court of the United States

OCTOBER TERM, 1944

No. 507

THE INTERSTATE COMMERCE COMMISSION, THE WILLETT COMPANY OF INDIANA, INC., AND THE PENNSYLVANIA RAILROAD COMPANY, APPELLANTS

HARRY A. PARKER, DOING BUSINESS AS PARKER
MOTOR FREIGHT, REGULAR COMMON CARRIERS
CONFERENCE OF THE AMERICAN TRUCKING ASSOCIATIONS, INC., ET AL.

BRIEF FOR THE INTERSTATE COMMERCE COMMISSION

OPINIONS BELOW

The court below filed no opinion in this case. Its findings of fact and conclusions of law (R. 44) are unreported. The report of Division 5 of the Commission (R. 6) appears in 42 M. C. C. 721.

JURISDICTION

The final decree of the specially constituted District Court was entered on June 30, 1944 (R. 46). The petition for appeal was presented on August 22, 1944 (R. 46), and the appeal was allowed on the same day (R. 49). The jurisdiction of this

Court is invoked under the Urgent Desciencies Act of October 22, 1913, c. 32, 38 Stat. 208, 220 (28 U. S. C. 47a); Section 238 of the Judicial Code, as amended by the Act of February 13, 1925, c. 229, 43 Stat. 938, par. 4 (28 U. S. C. 345); and Section 205 (h) of Part II of the Interstate Commerce Act, c. 498, 49 Stat. 543 (49 U. S. C. 305 (g)). Probable jurisdiction was noted November 6, 1944.

QUESTIONS PRESENTED

The ultimate issue involved is the validity of the Commission's order of September 25, 1943, which granted an application made under Sections 206 and 207 of Part II of the Interstate Commerce Act for a certificate of public convenience and necessity, subject to prescribed conditions, for operation by Willett Company of Indiana, Inc., one of the appellants herein, as a common carrier by motor vehicle over specified routes between certain points in Indiana and Michigan. The Commission found that public convenience and necessity required the inauguration of the motor carrier service proposed.

Subordinate issues are:

- 1. Whether the Commission's ultimate finding. that public convenience and necessity required the granting of the application was assed upon proper statutory criteria.
- 2. Whether such ultimate finding was supported by requisite factual findings.

3. Whether there was substantial evidence to support such ultimate finding.

STATUTE INVOLVED

The pertinent provisions of the Interstate Commerce Act are set forth in the Appendix "A;" infra, pp. 45-48.

STATEMENT.

The Willett Company of Indiana, Inc. (hereinafter called Willett), a subsidiary of The Pennsylvania Railroad Company (hereinafter called Pennsylvania), is the holder of motor carrier operating rights covering about 25 routes which parallel generally the lines of Pennsylvania in the territory west of the State of Pennsylvania and east of Chicago and St. Louis. Its motor carrier operations are auxiliary to and supplemental of the less-than-carload rail service of the Pennsylvania and its operating authorities are so restricted. This particular type of service was considered by this Court in *Thompson v. United States*, 321-U. S. 19.

By its application filed in this case Willett sought to extend its operations to seven additional routes along the rail lines of the Pennsylvania north of Fort Wayne, Indiana, on the Grand Rapids Division. The application took the usual course through the Commission. Protests were

¹C-2815, Certificate issued January 5, 1942; BMC-10 is sued as Certificate Eebruary 14, 1940, embracing Sub-1 and Sub-2; Certificate issued June 30, 1941, embracing Sub-3-4-5; Certificate issued May 28, 1943, embracing Sub-7-8.

filed by several motor carriers and associations within the territory of proposed operations. The Pennsylvania intervened on behalf of applicant. Hearings were had before Joint Board No. 23 on February 10 and June 1 and 2, 1942. In due course, following the filing of briefs, the issuance of a proposed report and the filing of exceptions thereto, Division 5 of the Commission entered its report and order of September 25, 1943, granting the application. Petition for reconsideration was denied by the entire Commission on February 8, 1944.

the Commission made two important administrative findings as a predicate to testing the record before it in the light of the statutory standard. These findings were: (1) that the applicant's proposed service will be of different character from that performed by motor carriers generally in that it will be limited to the handling of merchandise traffic to and from points on the lines of the railroad in substitution for train service (R. 11); (2) that this proposed service as restricted will not be "directly competitive or unduly prejudicial to the operation of any other motor carrier (R. 11).

The grant of authority was based upon the Commission's ultimate finding, in the statutory language, that the present and future public convenience and necessity require operation by the applicant as a common carrier by motor vehicle and that applicant is fit, willing, and able

properly to perform the service. Conditions were prescribed designed to restrict the proposed service to a coordinated motor-rail service.

² "We find that the present and future public convenience and necessity require operation by applicant as a common carrier by motor vehicle, in interstate or foreign commerce, of general commodities, between the points and over the routes shown in the appendix hereto, serving intermediate and offroute points which are stations on the rail line of The Pennsylvania Railroad Company, subject to the following conditions:

"1. The service to be performed by applicant shall be limited to service which is auxiliary to, or supplemental of, rail service of The Pennsylvania Railroad Company, hereinafter called the railroad.

"2. Applicant shall not serve any point not a station on a

vail line of the railroad.

"3. No shipments shall be transported by applicant as a common carrier by motor vehicle between any of the following points, or through or to or from more than one of said points; Fort Wayne, Ind., and Grand Rapids, Mich.

"4. All contractual arrangements between applicant, the railroad, and the American Contract and Trust Company shall be reported to us and shall be subject to revision, if and as we find it to be necessary in order that such arrangements shall be fair and equitable to the parties.

"5. Such further specific conditions as we, in the future, may find it necessary to impose in order to restrict applicant's operation to service which is auxiliary to, or supple-

mental of, rail service.

"We further find that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and our rules and regulations thereunder; and that a certificate authorizing such operations should be granted.

"Upon compliance by applicant with the requirements of sections 215 and 217 of the act and our rules and regulations thereunder, an appropriate certificate will be issued." 42 M. C. C., 726-727. (R. 12.)

Subordinate findings germane to the question of public convenience and necessity were:

- 1. A substantial volume of tonnage to be transported over the several routes, based upon less-than-carload rail traffic handled by the Pennsylvania (R. 8).
- 2. Resulting release of freight cars for use in through freight trains (R. 8).
- 3. Elimination of switching and its attendant expense (R. 8).
- 4. Expedition of movements of less-than-carload traffic and more frequent service (R. 8).
- 5. Advantage in the use of applicant's facilities over those of existing carriers and that the public purpose involved in the proposed coordinated service cannot be served as well by existing motor carriers (R. 11).

Following the Commission's denial of the petition for reconsideration the present suit was instituted. The principal contention made by appellees in the court below was that the Commission had failed to apply the proper statutory criteria in arriving at its conclusion that public convenience and necessity required the inauguration of the proposed service; that the fatal defect in the Commission's action lay first in its failure to find that existing motor carrier facilities within the territory proposed to be served were inadequate or that existing operators were unwilling to undertake the proposed service, and secondly in that the applicant had failed to sustain the

burden of showing such inadequacy or unwillingness and as a consequence the record upon which the Commission acted was deficient as a matter of law.³

At the hearing on April 28, 1944, in the court below the record before the Commission was introduced in evidence. This constituted all of the evidence in the case. On June 30, 1944, the court below entered its findings, conclusions, and decree setting aside the Commission's order. It filed no opinion.

While the process of the court's reasoning is. therefore, obscured, it is to be noted that the court starts with a finding, in direct contradiction to that of the Commission, that the "operations proposed are motor carrier operations which would be competitive with existing motor carrier service." (R. 45). It then finds that the Pennsylvania refused to make use of existing motor carrier service that applicant's proof concerned improvement or railroad service; that no proof of inadequacy of existing motor carrier service was presented by applicant but protestants had presented proof of such adequacy; and that there was no substantial evidence to prove public convenience and necessity (R. 45). The conclusions of law were that the applicant had failed to meet and the Commission

There were other allegations of error relating to procedural deficiencies and in the admission and rejection of evidence but the court below did not deem them of sufficient merit to pass upon.

had failed to exact from applicant, the requisite proof to establish public convenience and necessity, and that there was no substantial evidence to support the Commission's order (R. 45, 46).

SPECIFICATION OF ERRORS TO BE URGED

The District Court erred:

- 1. In holding that the operations proposed were motor-carrier and would be competitive with existing motor carrier service.
- 2. In holding that there was no substantial evidence to prove public convenience and necessity.
- 3. In concluding that applicant had not met the statutory requirements and that the Commission had failed to exact from applicant, as a railroad subsidiary, the requisite proof to establish public convenience and necessity.
- 4. In concluding that there was no substantial evidence to support the order of the Commission that public convenience and necessity required the issuance of a certificate authorizing operation by motor vehicle as a common carrier of property over the routes involved.
- 5. In enjoining the enforcement of the Commission's order of September 25, 1943.
 - 6. In failing to dismiss the complaint.

SUMMARY OF ARGUMENT

Congress, in enacting the Motor Carrier Act of 1935, was acting with knowledge of the special use of motor carriers in railroad service. Both the declared policy of 1935 and that of the Transportation Act of 1940 emphasize the desirability of coordination of the several types of transportation. The proviso of section 5 (2) (b) confirms this with respect to rail and motor carrier service.

The use of motor vehicles as an adjunct or supplement to railway freight service antedated the Motor Carrier Act of 1935. Such use as a substitute for way-freight train operation in the handling of less-than-carload freight was recognized by the Commission as a desirable improvement of rail service in two investigations (Motor Bus and Motor Truck Operation, 140 I. C. C. 685 (1928); Coordination of Motor Transportation, 182 I. C. C. 263), both of which formed the basis of the 1935 Act.

Early in the history of federal regulation of the trucking industry the Commission dealt with applications involving the substituted truck-for-rail service in the handling of less-than-carload rail shipments. It recognized such us as constituting a special type of service. Thereafter the Commission adopted a consistent policy in dealing with this type of application. It described it as a "new form of service, utilizing both forms of transportation to advantage, and differing from the service given by the railway alone or by competing motor carriers alone." Kansas City S. Transportation Co., Inc. Common Carrier Application, 10 M. C. C. 221, 235.

Succinctly stated, less-than-carload shipments from and to way stations on the rail line are handled as rail shipments, under rail billing and rail tariffs, except that the local movement is made in trucks instead of in way-freight trains.

So too the Commission has consistently held that the grant of the right to engage in this special type of truck operation does not involve: the introduction of new truck competition within the authorized territory since it works only the. improvement of an existing transportation service. Specifically in the instant case the Commission found that the proposed service would not interject a new competitive element in the field. While the Commission has recognized the possibility of intensified competition resulting from. improvement in the transportation service offered by an existing competitor its policy has not been to retard any form of progress in transportation which serves the public interest. Kansas City S. Transport Co., Inc.—Common Carrier Appl., 28 M. C. C. 5, 10; Missouri Pacific R. Co.,-Extension, 41 M. C. C. 241, 244.

In all cases involving this particular kind of service the Commission has carefully guarded the rights of rail-competing motor carriers not only by specifically defining the precise service authorized and annexing conditions designed to so limit it, but also by retaining the right at any time in the future to prescribe further conditions

that it may find necessary in order to restrict the operations to a service auxiliary to or supplemental of rail service. A review of the many cases of this type shows this to be a continuing and consistent policy, and one that accords with the national transportation policy. Rock Island Motor Transit Co.—Extension, 43 M. C. C. 470, 473, 474. An example of the exercise of the Commission's reserved right to act in futuro in preventing encroachment upon ordinary motor carrier operations is to be found in Campbell Sixtysix Express, Inc. v. Frisco Transp. Co., 43 M. C. C. 641.

In passing upon the merits of the many applications for the right to conduct this special type of truck operations, the Commission has followed a consistent pattern. It has considered the particular public advantages to be gained in each proposal coming before it and has measured them in the light of the statutory standard. In the instant case, as in the others, these advantages are, generally speaking, improvement and expedition in handling a substantial volume of less-than-carload rail traffic, the release of freight cars for use in through railroad movements, and the resulting economies which the substituted service would bring about.

The determination of the issue of public convenience and necessity is an administrative function within the Commission's expert competence

and there is no specification of the considerations by which the Commission is to be governed in making such determination. Texas & Pacific Ry. Co. v. Gulf, C. & S. F. Ry. Co., 270 U. S. 266, 273; Chesapeake & Ohio Ry. Co. v. United States, 283 U. S. 35, 41-43.

The finding of the court below indicates that the Commission's action was invalid because it thought it was incumbent upon Willett to show existing inadequacy of motor carrier service in the territory in question. But that issue never had a place in the proceeding since there was involved a special type of service, a sequence of rail and motor truck operations, with which no existing service was comparable. To sustain its finding the court below was forced to establish the premise that the integrated service proposed was in competition with the service conducted by existing motor carriers. In so doing it went beyond its powers and substituted its judgment for that of the Commission upon a purely administrative matter. Graf v. Powell, 314 U. S. 402, 411.

The Commission's finding of public convenience and necessity in this case is founded upon factors which have intimate relation to the public convenience and necessity. These findings include economies to be effected in the handling of local merchandise freight, increased efficiency, expedited and more frequent local service, and release of freight cars for other and more important

rail service. These findings alone rationalize the Commission's action, and are legally sufficient upon the issue of public convenience and necessity. But the Commission also gave consideration to the comparative advantages, on the one hand, of permitting the railroad through its chosen agent to conduct the proposed operations, and on the other, of having the several independent motor carriers perform the same service. It reiterated its prior considered judgment that the former method would result in more efficient and economic service.

While no precise issue was raised in the court below, of substantial evidence to support the findings upon which the Commission's action was ultimately based, we have given record references to show that such findings had ample support in the evidence.

ARGUMENT

I. The Substitution of Motor Truck for Local Rail Service in the Handling of Less-Than-Carload Rail Traffic is in Consonance With the Policy of the Interstate Commerce Act

In Motor Bus and Motor Truck Operation, 140 I. C. C. 685, (April 10, 1928) the Commission stated (p. 721):

"Efficient and economical management of railroads will to a constantly increasing extent call for the utilization of motor vehicles for short hauls or as feeder or distributing agencies."

At that time eleven railroads were using motor trucks to replace local freight trains. ("Facts and Figures of the Automobile Industry," 1927 Edition, issued by the National Automobile Chamber of Commerce.)

In 1930 the Commission undertook an investigation to secure needed information in regard to transportation by motor vehicles, the extent and character thereof, its relation to interstate commerce, and particularly to transportation by railroad and the extent of existing coordinated service. This investigation culminated in the Commission's report of April 6, 1932, Coordination of Motor Transportation; 182 I. C. C. 263, wherein it recommended federal regulation of motor carriers. In dealing with the extent to which rail carriers were then engaged in motor carrier operations the Commission described a specialized motor carrier operation in substitution for local rail movements of less-than-carload traffie, as follows (p. 336):

"(a) Substitution of trucks for, way trains and terminal switching.—It is generally recognized that peddler or way-freight operations, as to many points, consume much more time than do trucking movements and that they are costly because of the number of transfers required and the light loading of cars. In many

instances the roundabout character of railroad lines adds to the difficulty. With increased highway competition, these drawbacks have become more and more serious. For several years, therefore, a number of railroads* have been substituting truck for rail movements of less-than-carload traffic from designated transfer points, ineluding some points specifically set up for the purpose of concentrating freight by rail for truck delivery to outlying stations. In the reverse direction the trucks collect freight for concentration at such transfer points. The distances covered are commonly 15 to 20 miles in either direction from the concentrating point. Regular rail rates apply and store-door service is not furnished, but frquently the substitution of truck for rail movement is not shown in the tariff. The time of way-freight trains. which commonly carry a crew of five or six men, is thereby considerably reduced or the length of runs increased deliveries are frequently made one to two days earlier, a more flexible service is made available, and the number of lightly loaded cars is reduced. By taking care of traffic requiring expedited movement, it is further possible in some cases to reduce train service on unimportant lines from a daily basis to a 2-day basis, and in other cases, by

^{*}For example, the Pennsylvania, the New York, New Haven and Hartford, the Boston and Maine, the New York Central, and the St. Louis-Southwestern.

eliminating less-than-carload movements, through trains have been able to take over the carload movement of way trains, eliminating the latter. The requirements of carload traffic and the divergence of highways from the routes of rail lines render it impossible to abandon all local freight-train service."

These two Commission reports were forerunners of the Motor Carrier Act of 1935.

That Congress acted with full knowledge that the railroads had been using motor trucks in certain phases of their rail transportation service and that such use was to the public advantage is shown from the testimony of Commissioner Eastman before the House and Senate committees in 1935:

"They [the railroads] are utilizing motor vehicles in their terminal operations and they have used them as a substitute for way freight service, in some cases. My own view is that there will be found many more ways where they can be used to advantage in combination with railroad service and I hope to see the time when the railroads will utilize these opportunities fully." (Hearings on H. R. 5262 and H. R. 6016, 74th Cong., 1st Sess., 1935, p. 46)

"My own personal opinion is that the railroads are going more and more to find

S. 1629 was the bill that ultimately became the Motor Carrier Act of 1935. Both the Senate and House Reports on S. 1629 refer to these reports as forming the basis of the Motor Carrier Act.

that they can use trucks and busses to advantage in connection with their own service—supplement it and substitute for it where they can do the job better than the rails can do it." (Hearings on S. 1629, 74th Cong., 1st Sess., 1935, p. 85)

Against this background must be read the policy of the Motor Carrier Act, 1935, "to improve the relations between, and coordinate transportation by and regulation of, motor carriers and other carriers." The new declaration of policy of the Transportation Act of 1940 again emphasized the importance of coordinating and preserving all modes of transportation, and the promotion of "safe, adequate, economical and efficient service. * * all to the end of developing, coordinating and preserving a national transportation system by water, highway, and rail, as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense." The use of motor carriers as an adjunct to rail service was recognized and sanctioned by the provisions of section 5 which empowered the Commission to permit a railroad to acquire ownership or an interest in a motor carrier where consistent with the public interest and upon a finding that the transaction "will enable such carrier to use service by motor vehicle to public advantage in its operations and will not unduly restrain competition".

It is quite apparent that a coordinated rail-truck service in the handling of local less-than-carload freight traffic by rail carriers was not an innovation subsequent to the Motor Carrier Act of 1935. It already had a recognized place in the national transportation scheme. Consequently the language of the 1935 transportation policy as well as the policy declared by the Transportation Act of 1940, and the provisions of section 5, must be read as not only confirming the economic desirability of employing motor vehicles in the special type of service but enjoining upon the Commission the duty to foster and encourage such use when to the public advantage.

II. Consistently Since 1935 the Commission Has Recognized the Use of Motor Vehicles in Substitution for Way-Freight Rail Service on Less-Than-Carload Freight as Constituting a Special Type of Service

Since the enactment of the Motor Carrier Act of 1935 the Commission has dealt with numerous applications involving the use of motor vehicles as an adjunct to rail transportation. Numerous also have been the applications dealing with the substitution of trucks for the movement of local less-than-carload freight. The Commission's printed reports contain some 94 opinions dealing with this special type of service. These opinions disclose a consistent pattern. First, the Commission has described the special type of substi-

⁵ See Appendix "B." p. 49.

tuted service, second, it has considered the special public benefits which derive from the particular service sought to be inaugurated, third, it has considered the ability of the applicant properly to perform the service, and lastly it has been abundantly cautious in confining the proposed operations to this special type of service by annexing appropriate conditions and by retaining the right at any time in the future to impose further conditions designed to confine the operations to the truck-for-rail service.

In Thomson v. United States, 321 U. S. 19, this court succinctly described the type of service which is involved in this case and which has so many times been considered by the Commission. It is that service which the Commission described in Coordination of Motor Transportation, supra. Less-than-carload shipments from and to way stations on the rail line are handled as rail shipments, unde rail billing and rail tariffs, except that the local movement is made in trucks. Commission has classified this kind of truck transportation as a special type. Early in the regulation of the trucking industry the Commission in describing this service said, Pennsylvania Truck Lines, Inc.—Acquisition of Control, 1 M. C. C. 101, 111:

> "" * * The motor vehicle can undoubtedly be used as a very valuable auxiliary or adjunct to railroad service, particularly less-than-carload service, and

many opportunities for such use here have been pointed out of record and are clear. Such coordination of rail and motor vehicle operations should be encouraged. The result will be a new form of service which should prove of much public advantage. Nor do we believe that the creation of this new form of service will 'unduly restrain competition.' On the contrary, it should have the opposite effect."

Again in Kansas City S. Transportation Co., Inc., Common Carrier Application, 10 M. C. C. 221, 235, the Commission stated:

"" * Moreover, it is clear that this coordinated rail-motor service will be a new form of service, utilizing both forms of transportation to advantage, and differing from the service given by the railway alone or by competing motor carriers alone. * ""

III. The Commission Has Consistently Held That the Grant of the Right To Engage in This Truck-for-Rail Service Does Not Involve the Introduction of New Competition Within the Authorized Territory

Of utmost importance to a consideration of the issues here involved has been the fact that

^{*}Similar finding was made in Illinois Central R. Co. Common Carrier Appl., 12 M. C. C. 485; Gulf. M. & N. R. Co. Common Carrier Appl., 18 M. C. C. 721; Missouri Pacific R. Co., Extension of Operations—Illinois, 19 M. C. C. 605; Willett Co. of Ind., Inc., Extension—Ill., Ind. and Ky., 21 M. C. C. 405; Pacific Motor Trucking Co. Common Carrier Appl., 34 M. C. C. 249.

the Commission defined one of the characteristics of this special form of service as being a mere improvement of what is essentially a rail service. Consequently it has consistently held that its inauguration does not inject a new competitive factor in a given territory. Moreover it has made a finding to this effect, not only in this case, but in other similar applications.

In Kansas City S. Transp. Co., Inc. Common Carrier Appl., supra, the contention was made, as it is in the instant case, that the existing motor carriers would suffer severely from a new competitive service. To this the Commission said, p. 237:

"Protestants now meet with the competition of the railway, but, in the case of the merchandise traffic handled in less-than-carload lots, that competition has not been particularly formidable. The railway now proposes to improve the handling of that traffic by establishing a coordinated truckrail service in connection with applicant. As we have seen, the conclusion is warranted that there is a public need for this coordinated service, that it is a new and different character of service which neither the railroads nor the trucks alone can supply, and that it cannot be furnished effectively and well except through the use of applicant's facilities. We do not believe that the development of this new form of service will serious, endanger the operations of protestants, but, in any event, the

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public ought not to be deprived of the benefit of an improved service merely because it may divert some traffic from other carriers. If this principle had been followed, indeed, no motor-carrier service could have been developed."

The competition which the Commission speaks of here is that which already exists and the diversion of traffic is only that which is a possible concomitant to an improved existing service.

In a subsequent report in the same case Chairman Eastman speaking for the full Commission said, Kansas City S. Transport Co., Inc., Common Carrier Appl., 28 M. C. C. 5, 10:

"It must be borne in mind, as above indicated, that in all of these cases the railroad has been and is transporting the traffic in question between its stations and is under obligation to continue to do so. What it is seeking is not to enter a new field of service but to substitute a more efficient for a less efficient means of service. In both its direct and its indirect effect such substitution is in the public interest. * * One competitive carrier has no vested right in the continuation by another of an inefficient method of operation, and we believe it to be neither the policy of Congress nor the proper function of this Commission to retard any form of progress in transportation which will serve the public interest."

In Missouri Pacific R. Co.—Extension, 41 M. C. C. 241, 244, the Commission again pointed out the

distinction between a new competitive service and improvement in existing service:

"Neither do we believe that the operations of competing carriers will be unduly. affected by the granting of authority to operate over the routes in question. service to be rendered is but a substitution of motor for rail service in fulfilling applicant's undertaking to transport as a railroad—a substitution of a more efficient for a less efficient means of service. The traffic is less-than-carload rail traffic which applicant is and has been under obligation to transport and which it will continue to transport whether we grant or deny the application. The traffic moves and willcontinue to move at rail rates and on rail In short, the service will be auxbilling. iliary to or supplemental of applicant's rail service, and the authority granted will be so limited."

In Seaboard Air Line Ry., 34 M. C. C. 441, which is now before this Court, No. 558, the Commission said, p. 443:

do not solicit traffic from the general public but merely utilize motor vehicles in fulfilling their undertaking to transport as a railway. The motor-vehicle service is auxiliary to or supplemental of applicants' rail service and is so limited by condition 1. The modifications requested [change from prior or subsequent vail movement conditions to key points] will in no way change the char-

acter of the service applicants are authorized to perform as a motor carrier; nor will they adversely affect the operations of existing motor carriers, nor restrain competition in the motor-carrier field."

In Penna. Truck Lines, Inc.—Control—Barker M. Frt., 5 M. C. C. 9, 11, the Commission described negatively the approved operations as follows:

which are auxiliary or supplementary to train service. Except as hereinafter indicated, nonapproved operations are those which otherwise compete with the railroad itself, those which compete with an established motor carrier, or which invade to a substantial degree a territory already adequately served by another rail carrier."

And finally in the case here considered the Commission specifically found that the proposed service would not interject a new competitive element in the field (R. 11).

IV. In Granting Operating Authorities To Engage in This Specialized Service the Commission Has Been at Pains To Condition the Grants of Authority so as To Prevent Expansion Into or Encroachment Upon the Service of Motor Carriers Engaged in Ordinary Trucking Service Within the Authorized Territory

In all the cases of this kind with which it has dealt the Commission has jealously guarded the

Of significance is the fact that the Commission in determining the volume of tonnage which the substituted service would handle used the actual less-than-carload freight which was handled by rail over the proposed routes (R. 427).

rights of competing motor carriers, not only by specifically defining the precise service authorized and annexing conditions designed to so limit the service, but by retaining the right at any time in the future to prescribe further conditions that it may find necessary in order to restrict the operations to a service auxiliary to or supplemental of the rail service. While the reservation with respect to the imposition of future conditions has been common to all grants of authority to conduct this type of service, other conditions have varied to meet the needs of the particular case. But running throughout all of these cases is shown the consistent policy on the Commission's part to foster and encourage this improved form of service but at the same time to set safeguards against an expansion to a point where it might compete destructively with the highway service of the independent motor carriers. A cursory examination of the reported cases exhibits this policy.

One of the first specific conditions which the Commission prescribed was that the applicant shall not render service from or to, or interchange traffic at any point other than stations on the lines of the railroad.* Subsequently the Commission

[&]quot;Great Northern Railway Co., Common Carrier Appl., 1 M. C. C. 73; Rock Island Motor Transit Co.—Purchase— White Line M. Frt., 5 M. C. C. 451; Texas & Pacific Motor Transport Co.—Purchase—Johnson, 5 M. C. C. 89; Texas & Pacific Motor Transport Co.—Purchase—Southern Transp. Co., 5 M. C. C. 653; Penna, Truck Lines, Inc.—Control—Alko

adopted the so-called "prior or subsequent rail haul" condition, Kansas City S. Transp. Co., Inc., Common Carrier Appl., 10 M. C. C. 221, which provided that the substituted service be limited to shipments received from or delivered to the rail-road under a through bill of lading covering in addition to movement by truck, a prior or subsequent movement by rail. Chairman Eastman in a concurring opinion in the case last cited criticised the rail-track movement condition as too restrictive pointing out that supplementary truck operation where there is no rail movement "may well be necessary to a coordination which will produce the best possible service at the lowest possible expense." (P. 241.)

Similar rail-haul conditions were imposed in numerous subsequent cases." The requirement of

Exp. Lines, 5 M. C. C. 77; Penna Truck Lines, Inc.—Purchase—Cain, 5 M. C. C. 73; Rock Island M. Transit Co.—Purchase—Burlington Transp. Co., 5 M. C. C. 629; Rio Grande Motor Way, Inc.—Purchase—Coleman, 5 M. C. C. 643; Burlington Transp. Co.—Purchase—Sand, 5 M. C. C. 658; Pacific M. Trucking Co.—Control—Peoples Frt. Line, 5 M. C. C. 302; Penna. Truck Eines, Inc.—Control—Barker M. Frt., 5 M. C. C. 9; Burlington Transp. Co.—Purchase—Bell Transfer, Inc., 5 M. C. C. 291.

<sup>Illinois Central R. Co., Common Carrier Appl., 12 M. C.
C. 485; Texas & Pacific Motor T. Co.—Extension, 14 M. C. C.
645; Texas & Pacific Motor T. Co.—Extension, 14 M. C. C.
649; Gulf, M. & X. R. Co., Common Carrier Appl., 18 M. C.
C. 721; Missouri Pac. R. Co.—Extension, 19 M. C. C. 605;
Great Northern Ry. Co.—Extension, 19 M. C. C. 745; Missouri Pac. R. Co.—Extension, 19 M. C. C. 745; Missouri Pac. R.</sup>

a prior or subsequent rail haul was abandoned as an unalterable condition in the performance of this substituted service upon reconsideration by the full Commission of the Kansas City Case and the alternative "key point" condition was imposed. Kansas City S. Transport Co., Common Carrier Appl., 28 M. C. C. 5. This so-called "key point" condition provides that, "no shipments shall be transported by applicant as a common carrier by motor vehicle between any of the following points, or through or to or from more than one of said points" (key points are then specified): The reason for the modification of the rail-haul condition was stated by the Commission as follows, p. 10:

"As the above quotations indicate, [10 M. C. C. 221, 238, 239] the thought of division 5 in regard to this matter was that public convenience and necessity required a coordi-

Notor T. Co., Common Carrier Appl., 21 M. C. C. 513; Barcus Extension, 22 M. C. C. 147; Louisiana, A. & T. Ry. Co., Common Carrier Appl., 21 M. C. C. 513; Barcus Extension, 22 M. C. C. 147; Louisiana, A. & T. Ry. Co., Common Carrier Appl., 22 M. C. C. 213; Penna Truck Lines, Inc., Common Carrier, Appl., 24 M. C. C. 261; Willett Go. of Ind., Inc., Extension, 21 M. C. C. 405; Pacific Motor Trucking Co., Common Carrier Appl., 21 M. C. C. 761; Rock Island Motor T. Co., Extension, 29 M. C. C. 695; Northern Pacific T. Co., Extension, 30 M. C. C. 58; Rock Island Motor T. Co., Extension, 30 M. C. C. 243; Chicago & N. W. Ry., Common Carrier Appl., 31 M. C. C. 299; Seaboard Air Line Ry. Co., Extension, 32 M. C. C. 141; Gulf Transportation Co.—Extension, 32 M. C. C. 762; Rock Island Motor T. Co.—Extension, 33 M. C. C. 506.

nated rail-and-truck service, which, upon the records of the cases before it, could only be furnished efficiently and effectively by conducting the two forms of transportation under a single control, but that there was adequate independent motor-carrier service between all stations, generally speaking, so that public convenience and necessity did not require the institution between the stations of new motor-carrier service under railroad control which is not coordinated with prior or subsequent rail service. Hence condition 3. Upon further consideration, we are of the opinion that the division gave insufficient weight to the fact that the railroad, as well as the independent motor carriers, has been and is furnishing service between the stations, but that between many of them the present means of. railroad service, the way-freight train, is uneconomical and inefficient. This is the reason for coordinating truck service with the rail service, and, as we have found (and as division 5 also found), public convenience and necessity require the increased economy and efficiency which will result from such substituted use of trucks. By the same reasoning, however, public convenience and necessity require the substitution of trucks for way-freight train service regardless of whether there is a prior or subsequent movement by rail. Such substitution is a part of the plan of coordination, . and unless it can be accomplished, the full benefits in increased economy and efficiency

which the public interest demands cannot be secured."

"Key points" were described as the larger points on the lines of the respective railroads between which through freight trains are operated and which are used as break-bulk points for distribution by way-freight trains of merchandise destined to way stations located between such points, p. 11.

Thus while the requirement of a prior or subsequent rail movement was abandoned as a necessary condition to grants of this character the substitution therefor of the key points condition did not change the essential character of the service as auxiliary to or supplemental of rail, service.

Two recent decisions of the Commission further emphasize the policy of the Commission of denying the right of rail carriers to enter the motor carrier field generally. In Rock Island Motor Transit Co.—Extension, 43 M. C. C. 470, 472-474, the motor carrier subsidiary of the railroad in addition to proposed substituted service sought authority to conduct all-motor operations over certain routes. The Commission denied the general authority on the ground of lack of public need and inconsistency with the national transportation policy. In Campbell Sixty-Six Express, Inc. v. Frisco Transp. Co., 43 M. C. C. 641, complaint was made that the motor carrier subsidiary of the St. Louis-San Francisco Railway had con-

ducted motor carrier operations in violation of section 206 (a) and had failed to comply with the orders, rules and regulations of the Commission to which the operations of the motor carrier subsidiary were subject. The Commission took occasion to examine the various operating authorities of the defendant motor carrier. In connection therewith, it stated, p. 653:

The operations considered herein were acquired piecemeal, and undoubtedly it did not appear at the time the certificates were first issued that limitations of the character requisite to insure the rendition of a rail auxiliary and supplementary service were necessary. In some instances, it could not. then have been determined with precision the type of limitations that would be necessary. And, as noted above, with respect to all the acquisitions, there was the clear implication by the Transportation Company that the service it intended to perform was of a character so well understood and so different from that of motor common carriers having no affiliations with railroads as to require no specific limitations or restrictions. That definite and precise limitations and restrictions have not been imposed is not important, however, in view of the reservation, in many of the purchases, of the right to impose such restrictions when necessary. All the certificates entered pursuant to the orders in the purchase cases made appropriate reference to the latter,

and so does the certificate issued on December 20, 1943.

"We find that the various acquisitions of motor common carrier operations herein considered and specified in the complaint herein, except those approved in 35 M. C. C. 132 and 255, were authorized and approved in order that the Transportation Company could perform the character of motor-carrier service that is strictly auxiliary to or supplemental of the rail service of the railway; and that in respect of such operations the Transportation Company was not authorized to, and did not, acquire the right to provide direct motor-carrier service to the public; that the performance of such service by the Transportation Company in connection with such operations, indicated in the appendix hereto, has been and is unauthorized and should be discontinued."

V. In Approving the Inauguration of This Specialized Service the Commission Has Consistently Applied the Same Criteria of Public Convenience and Necessity

Considerations which have moved the Commission to favorable action in cases involving the kind of motor truck service which is here proposed have been uniform and consistent. Adopting the general proposition that the use of trucks as an adjunct to rail service is a desirable end and should be encouraged, the Commission has considered the particular advantages to be gained in each proposal coming before it and has

measured them in the light of the statutory standard. These advantages, generally speaking, have been the economies which will result in the use of trucks in substitution for local way-freight trains, faster and more frequent service to the local shippers, improvement in the through rail service on carload shipments, the release of cars for such through movements.

Thus in Kansas City S. Transport Co., Inc. Common Carrier Appl., supra, the Commission found, p. 235:

"The railway is now furnishing a less-than-carload, or merchandise, freight service which is expensive and in many respects unsatisfactory and inefficient. Through applicant, if the certificate sought be obtained, it proposes to use motor vehicles in coordination with its rail operations in such a way that a merchandise service can be provided that will be much less expensive and at the same time more expeditious and more convenient and generally satisfactory to the public served. " ""

Again in Illinois Central R. Co. Common Carrier Appl., supra, the Commission said, p. 491:

"The chief purpose of the proposed service is to avoid as far as possible the use of local way-freight trains in the handling of merchandise traffic, both because such trains are costly to operate and because they do not afford sufficiently expeditious, flexible, and convenient service to the small stations

they are designed to serve. The mauguration of the coordinated operations here proposed will result in improved service on merchandise as well as carload traffic. There will be no diversion of traffic from other agencies other than what may come about as a result of the offering of an improved service to the shipping public. * * ""

Similar basis for its action is to be found in the instant case. The public convenience and necessity which required the approval of Willett's application was induced by the need for transporting a substantial volume of less-than-carload traffic, improvement and expedition in the handling of this traffic, the release of needed freight cars for use in through railroad movements, and the resulting economies which the substituted service would bring about. (Supra p. 6.)

VI. In Passing Upon the Issue of Public Convenience and Necessity Presented to It in the Instant Application the Commission Did Not Apply Improper Criteria Nor Fail To Apply Necessary Criteria

Section 207 (a) of part II of the Interstate Commerce Act empowers the Commission to issue a certificate authorizing operations as a motor carrier "if it be found that * * * the proposed service, to the extent to be authorized by the certificate, is or will be required by the present or future public convenience and necessity." This statutory requirement applies equally to all ap-

plicants for certificates as a motor carrier, be they railroad, railroad subsidiary, independent corporation, or individual.

Obviously, the issue of "public convenience and necessity" is a matter peculiarly requiring the exercise of the Commission's expert judgment in the field of transportation. New York Central Securities Co. v. United States, 287 U. S. 12, 25; United States v. Carolina Freight Carriers Corp., 315 U. S. 475, 482, 490; Board of Trade of Kansas City v. United States, 314 U. S. 534, 546. See also Interstate Commerce Comm'n v. Union Pacific R. Co., 222 U. S. 541, 547; O'Keefe v. United States, 240 U. S. 294, 303; Rochester Telephone Gorp. v. United States, 307 U. S. 125, 146; Gray v. Powell, 314 U. S. 402, 411-412. In exercising this administrative function there are no specifications of the considerations by which the Commission is to be governed in determining whether public convenience and necessity require the inauguration of motor vehicle service. As under section 1 (18) dealing with the extension and abandonment of railway lines it is the duty of the Commission to find the facts and in the exercise of a reasonable judgment to determine that question. Texas & Pacific Ry. Co. v. Gulf, C. & S. F. Ry. Co., 270 U. S. 266, 273; Chesapeake & Ohio Ry. v. United States, supra; Colorado. v. United States, 271 U. S. 153, 168.

While the statutory standard for the granting of operating authority is always constant the

elements which go to make up that requirement may vary according to the particular type of service proposed. Conceding that where it is proposed to duplicate an existing motor carrier service the issue of the adequacy of such existing service may be a vital factor, the whole structure of appellee's argument rests upon this initial error, namely the unwarranted assumption that the service they are rendering is in fact a duplication of the proposed service.

In Thompson v. United States, 321 U. S. 19, 24, this Court accurately described the proposed service as follows:

"The undisputed facts here disclose that only the railroad holds itself out to the general public to engage in a single complete freight transportation service to and from all points on its lines. As an integral and essential part of this service tendered by the railroad, motor vehicle transportation between certain stations is provided. It is completely synchronized with the rail service and has none of the elements of an independent service offered on behalf of the motor vehicle operators. Their operations are the operations offered by the railroad as component parts, not as separate or distinct segments, of its single service. They may be replaced or eliminated at the sole discretion of the railroad."

In this case there were no motor carriers in the territory affected capable alone of providing an integrated rail-truck service. The service proposed was dissimilar from the over-the-road service they were rendering. Hence no question of unnecessary or improvident duplication of service was involved.

The mere willingness of a certified trucker to furnish one part of an integrated service does not satisfy the rule,—if there be one,—that where the inadequacy of existing service is not shown the statutory standard is not met. To hold the contrary would result in conferring upon the Commission a left-handed power to compel a railroad, by refusing the authority sought, to deal with existing truck lines notwithstanding its unwillingness so to do.

The finding of the court below is that the service proposed by Willett was a like and competitive service to that being rendered by certificated truck operators along the routes described in the application. From that premise it finds that there was no proof offered by Willett of the inadequacy of the service of such operators, and therefore the Commission's finding of public convenience and necessity was without evidentiary. support. As has been pointed out the application in question did not seek to establish a new and like transportation service; it sought merely authority to improve an existing service. That such was the character of the proposed service " the Commission found when it said that it would be of different character from that performed by motor carriers generally, and as restricted

would not be directly competitive or unduly prejudicial to the operation of any other motor carrier. But the court below not only ignores this fundamental distinction, but tries to offset it by a finding that "the operations proposed are motor carrier operations which would be competitive with existing motor carrier service." In so doing it has usurped the Commission's function and substituted its judgment for that of the Commission upon an administrative matter. Compare United States v. Marshall Transport Co., 322 U. S. 31; Gray v. Powell, supra; Helvering v. Clifford, 309 U. S. 331, 336; Rochester Telephone Corp. v. United States, supra; Miss. Valley Barge Line Co. v. United States, 292 U. S. 282, 286.

If the Commission correctly classified the proposed service as a specialized form of service of a different character from that performed by motor carriers generally, do its evidentiary findings lawfully support the ultimate findings of public convenience and necessity?

"Public convenience and necessity" is closely related to the phrase "public interest." It must be given a broad application consistent with the transportation policy. Thus in *Interstate Commerce Commission* v. Railway Labor Ass'n, 315 U. S. 373, 376-377, it was said:

"The phrase 'public convenience and necessity' no less than the phrase 'public interest' must be given a scope consistent with the broad purpose of the Transportation

Act of 1920: to provide the public with an efficient and nationally integrated railroad system. New England Divisions Case, 261 U. S. 184, 189-191. Clear recognition that 'public convenience and necessity' includes the consideration of effects on the national transportation system of a proposed abandonment appears in the decision of this Court in Colorado v. United States, 271 U. S. 153. There, Mr. Justice Brandeis, although stating that 'public convenience and necessity' was the sole criterion for determining whether or not an abandonment should be allowed, nevertheless considered the effect of the proposed abandonment in a much broader sphere than the immediate locality and population served by the trackage to be abandoned. See also Transit Commission v. United States, 284 U. S. 260."

Compare also Purcell v. United States, 315 U. S. 381, 383; Radio Commission v. Nelson Bros., 289 U. S. 266, 285.

The Commission's finding of public convenience and necessity in this case is founded upon factors which have intimate relation to the public interest.

The court below found that Willett's proof concerned improvement in railroad service. Presumably it meant to sustain the contention that the Commission had acted only upon proof of "railroad convenience." This in turn was based upon the showing of economies to be effected. But the prevention of waste and inefficiency has always been recognized as of public concern. New York Central Securities Co. v. United States, 287 U. S. 12, 25; Texas v. United States, 292 U. S. 522, 530, The National Transportation Policy specifically enjoins upon the Commission regulation to promote "economical, and efficient service and foster sound economic conditions in transportation and among the several carriers."

The Commission in this case found that the substitution of motor truck for rail service in the handling of local less-than-carload freight would effectuate a reduction in cost and result in an increase in efficiency in the transportation over the routes involved.

The Commission found that the local less-thancarload freight service of the railroad would be expedited and more frequent by the substitution of trucks for peddler cars in its handling. These two factors bear directly on public convenience and necessity and are a far cry from "railroad convenience."

The Commission found that the substitution of trucks for rail service would result in the release of railway freight cars for other and more important rail service; a consideration that requires no emphasis in war time.

These findings, we submit, are in and of themselves sufficient to support the grant of operating authority. That the Commission went further and considered the relative advantages to be

gained through the use of railroad-owned facilities as against the facilities of appellee motor carriers was not indicative of its view that such consideration was an indispensable ingredient to a valid grapt of authority. The Commission had already found that the service Willett proposed to render in conjunction with the Pennsylvania was of public advantage and should be instituted. It merely took note of and answered the contention that appellee motor carriers were able and willing to undertake that segment of the whole service which Willett was seeking authority to perform. Its answer was a reiteration of its judgment which had ripened through consideration of many similar contentions made in many similar cases, namely, that when it appears that all of the stations in question on the railroad's line cannot be served by a single existing independent motor carrier it is more advantageous to the public for the rail carrier to employ its own subsidiary and thus achieve a complete service under a synchronized management in coordination with the railroad's operation. Kunsas City S. Transport Co. Common Carrier Appl., 10 M. C. C. 221; Willett, Co., of Ind. Extension, 21 M. C. C. 405, 409; Kansas City S. Transport Co. Common Carrier Appl., 28 M. C. C. 5, 8; Pennsylvania Truck Lines, Inc.-Extension, 42 M. C. C. 759, 773.

We submit, therefore, that the Commission in applying the statutory standard in this case was

not bound to weigh the comparative advantages of permitting Willett to perform the motor truck portion of the proposed service as against the advantages of having appellee carriers perform in lieu of Willett. True the latter were willing to undertake this work but they were not "able" to perform in view of Pennsylvania's refusal to deal with them, and the Commission was without power to compel such joint undertaking.

The situation may be epitomized in the abstract as follows:

A and B have agreed to conduct a certain transportation service, each performing a distinct function in providing a single integrated service. This service is unique in the particular field of operation.

B is a new operator and, before he can lawfully join with A in providing the new service, must show that he is fit, willing and able properly to perform his portion of the operation and that public convenience and necessity require the inauguration of the new service.

C is presently engaged in conducting transportation service of a different character from that proposed within the territory involved, but has the facilities and is willing to fulfill B's undertaking in providing this service in conjunction with A.

B shows that he is fit, willing and able to perform his part in providing this new service and that the new service will be of substantial public benefit.

A states that he is unwilling to deal with anyone but B. Under these circumstances is the Commission required, before it can make a valid finding of public convenience and necessity, to consider the qualifications of C to perform B's part of the proposed service, and must the Commission if it finds that C is willing and able to assume B's undertakings deny B a certificate of public convenience and necessity, notwithstanding that the result will be that the new form of service will not be instituted?

VII. The Evidentiary Facts Upon Which the Commission Acted Have Substantial Support in the Record

We assume that appellees do not seriously contend that the factual findings of the Commission as disclosed by its report are without substantial support in the record: their challenge rests upon the sufficiency of these findings alone as a matter of law. The untenableness of that contention has, we submit, already been shown. We, therefore, content ourselves with giving record references to evidence which lends ample support to the Commission's findings.

As to the utilization of freight cars it was testified that the institution of the substituted motor-truck service would enable the railroad to utilize more efficiently the available supply of cars through more economical operation, elimination

of the use of box cars, the heavier loading of box cars and the conservation of their use. (R. 90-92, 123.)

It was also shown that the proposed service would simply supplement and expedite rail service. (R. 90.) No points would be served other than stations on the railroad line. (R. 108). Willett would not originate any traffic or be a party to any tariff under which shipments would move. (R. 107.) The railroad would originate all freight and it would move on railroad billing. (R. 188.) The railroad, not the applicant, would solicit freight from the general public. (R. 372, 373.) Willett would continue to haul only for the railroad. (R. 162.) It would receive no compensation except from the railroad. (R. 173.) Charges would be based on rail mileage and tariffs. (R. 420.)

The improved service that would result was shown by testimony that the railroad would be enabled to place its service to small towns on a parity with that afforded the larger stations. (R. 136.) Proof was adduced that a saving of twenty-four to forty-eight hours in the time of service would result. (R. 103-5, 112-118.) There was shipper evidence that the expedited service would be beneficial. (R. 244, 268, 281, 284, 294.)

The economies to be effected were shown in savings in car miles, locomotive expenses, handling of freight, yard switching, use of box cars, and overtime. (R. 362-364, 388.)

CONCLUSION

When passing upon the application of Willett in this case the Commission had already dealt with the question of the desirability in the public interest of utilizing motor vehicles in connection with way-freight service of railroads on lessthan-carload shipments. To carry out this it had recognized and established a type of motor carrier operation distinguishable from the ordinary type of common carrier service by motor vehicle. It had described the characteristics of this specialized service and had set safeguards against an expansion beyond its peculiar limits. Being essentially an improved railroad service it had applied to individual applications tests which were especially adapted to the service under consideration. As an administrative body charged with the duty of applying the statute in the light of the declared policy it found that those same elements of public convenience and necessity which it had considered determinative in like cases were present here. In so treating the Willett application it committed no error of law which warranted the court below in setting aside the order granting the certificate.

Respectfully submitted.

DANIEL W. KNOWLTON,
Chief of Counsel.
DANIEL H. KUNKEL,
Attorney for
Interstate Commerce Commission.

APPENDIX "A"

The National Transportation Policy, as set forth in the Transportation Act of 1940, is as follows (54 Stat. 899):

It is hereby declared to be the national transportation policy of the Congress to provide for fair and impartial regulation of all modes of transportation subject to the provisions of this Act, so administered as to recognize and preserve the inherent advantages of each; to promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation and among the several carriers; to encourage the establishment and maintenance of reasonable charges for transportation services, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices; to cooperate with the several States and the duly authorized officials thereof: and to encourage fair wages and equitable working conditions;—all to the end of developing, coordinating, and preserving a national transportation system by water, highway, and rail, as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense. All of the provisions of this Act shall be administered and enforced with a view to carry out the above declaration of policy.

Sec. 5. (2) (a) It shall be lawful, with the approval and authorization of the Commission, as provided in subdivision (b)—

(i) for two or more carriers to consoli-

date or merge their properties or franchises, or any part thereof into one corporation for the ownership, management, and operation of the properties theretofore in separate ownership; or for any carrier, or two or more carriers jointly, to purchase, lease, or contract to operate the properties. or any part thereof, of another; or for any carrier, or two or more carriers jointly, to acquire control of another through ownership of its stock or otherwise; or for a person which is not a carrier to acquire control of two or more carriers through ownership of their stock or otherwise; or for a person which is not a carrier and which has control of one or more carriers to acquire control of another carrier through ownership of its. stock or otherwise; or

(b) Whenever a transaction is proposed. under subparagraph (a), the carrier or carriers or person seeking authority therefor shall present an application to the Commission, and thereupon the Commission shall notify the Governor of each State in which any part of the properties of the carriers involved in the proposed transaction is situated, and also such carriers and the applicant or applicants (and, in the case carriers by motor vehicle are involved, the persons specified in section 205 (e)), and shall afford reasonable opportunity for interested parties to be heard. If the Commission shall consider it necessary in order to determine whether the findings specified below may properly be made, it shall set said application for public hearing, and a public hearing shall be held in all cases where carriers by railroad are involved. the Commission finds that, subject to such

terms and conditions and such modifications as it shall find to be just and reasonable, the proposed transaction is within the scope of subparagraph (a) and will be consistent with the public interest, it shall enter an order approving and authorizing such transaction, upon the terms and conditions, and with the modifications, so found to be just and reasonable: Provided, That if a carrier by railroad subject to this part, or any person which is controlled by such a carrier, or affiliated therewith within the meaning of paragraph (6), is an applicant in the case of any such proposed. transaction involving a motor carrier, the Commission shall not enter such an order unless it finds that the transaction proposed will be consistent with the public interest and will enable such carrier to use service by motor vehicle to public advantage in its operations and will not unduly: restrain competition.

Part II. "Sec. 206 (a) Except as otherwise provided in this section and in section 210a, no common carrier by motor vehicle subject to the provisions of this part shall engage in any interstate or foreign operation on any public highway, or within any reservation under the exclusive jurisdiction of the United States, unless there is in force with respect to such carrier a certificate of public convenience and necessity issued by the Commission authorizing such operations:

Sec. 207. (a) Subject to section 210, a certificate shall be issued to any qualified applicant therefor, authorizing the whole or any part of the operations covered by the application, if it is found that the applicant

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is fit, willing, and able properly to perform the service proposed and to conform to the provisions of this part and the requirements, rules, and regulations of the Commission thereunder, and that the proposed service, to the extent to be authorized by the certificate, is or will be required by the present or future public convenience and necessity; otherwise such application shall be denied: Provided, however, That no such certificate shall be issued to any common carrier of passengers by motor vehicle for operations over other than a regular route or routes, and between fixed termini, except such carriers may be authorized to engage in special or charter operations.

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Supreme Court of the United Stafeste OKOPLEY OCTOBER TERM, 1944.

No. 507.

INTERSTATE COMMERCE COMMISSION, THE WILL-ETT COMPANY OF INDIANA, INC., AND THE PENN-SYLVANIA RAILROAD COMPANY, APPELLANTS,

HARRY A. PARKER, DOING BUSINESS AS PARKER MOTOR FREIGHT, REGULAR COMMON CARRIERS CONFERENCE OF THE AMERICAN TRUCKING ASSOCIATIONS, INC., ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF INDIANA.

BRIEF OF APPELLANTS. THE WILLETT COM-PANY OF INDIANA, INC., AND THE PENN-SYLVANIA RAILROAD COMPANY.

> HARRY E. YOCKEY. . 108 E. WASHINGTON ST.,

INDIANAPOLISM, IND. Counsel for Appellant, The Willett Company

Indiana, Inc.

JOHN DICKINSON. H. Z. MAXWELL.

JOHN B. PRIZER. 1740 BROAD STREET

STATION BUILDING, PHILADELPHIA, PA.

Counsel for Appellant, The Pennsylvania Railroad Company.

STERLING G. MCNEES. STATE STREET BUILDING. HARRISBURG, PA.

R. AUBREY BOGLEY. HIBBS BUILDING.

WASHINGTON, D. C. Of Counsel.

ALLES, LARE & SCOTT, PRS., PHILADELPHIA.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1944.

No. 507.

Interstate Commerce Commission, The Willett Company of Indiana, Inc., and The Pennsylvania Railroad Company, Appellants,

V

HARRY A. PARKER, DOING BUSINESS AS PARKER MOTOR FREIGHT, REGULAR COMMON CARRIERS CONFERENCE OF THE AMERICAN TRUCKING ASSOCIATION, INC., ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF INDIANA.

OF INDIANA, INC., AND THE PENNSYLVANIA RAILROAD COMPANY

OPINIONS BELOW.

No opinion was filed by the specially constituted District Court. Its findings of fact and conclusions of law (R. 43-46) are not officially reported. The report of the Interstate Commerce Commission (R. 6-14) appears in Volume 42 of the Interstate Commerce Commission's Reports of its Motor Carrier Cases, at page 721 (42 M. C. C. 721).

JURISDICTION.

The final decree of the District Court was entered on June 30, 1944 (R. 46). The petition for appeal was presented on August 22, 1944 (R. 46-47), and was allowed the same day (R. 49). The jurisdiction of this Court is invoked under the Urgent Deficiencies Act of October 22, 1913, c. 32, 38 Stat. 208, 219, 220-21 (28 U. S. C., sees. 41(28), 44, 47, 28 U. S. C. Supp. VII, Sec. 47(a)), and Section 238 of the Judicial Code as amended by the Act of February 13, 1925, c. 229, 43 Stat. 936-38 (28 U. S. C. Supp. VII, Sec. 345). Probable jurisdiction was noted by this Court on November 6, 1944 (R. 918).

STATUTE INVOLVED

The statute here involved is the Interstate Commerce Act, particularly Part II thereof, also known as the Motor Carrier Act of 1935. The provisions of the Act which are specifically involved herein are set forth in the appendix to this brief, at pages 1a-8a thereof.

STATEMENT.

This case grows out of an application which appels lant, The Willett Company of Indiana, Inc. (R. 59), a wholly-owned subsidiary of The Pennsylvania Railroad Company (R. 145), also an appellant herein, filed with

the Interstate Commerce Commission under Sections 206 (a) and 207 (a) of Part II of the Interstate Commerce Act as amended (49 Stat. 551). The application was for authority to engage in so-called "substituted motor freight service" over certain highway routes in Indiana and Michigan, parallel to the lines of the Pennsylvania Railroad, serving only stations of the Pennsylvania Railroad, and transporting in interstate commerce general commodities under freight bills, bills-of-lading and tariffs of the Pennsylvania Railroad (R. 59-71).

The service proposed is generally known as "substituted motor freight service in lieu of railroad local peddler cars." The application was for love to conduct such service over seven different routes, the object being to handle locally less-than-carload freight moving via the Pennsylvania Railroad for the purposes: (1) to expedite the shipments of patrons of the Pennsylvania Railroad, both inbound and outbound: (2) to effect operating economies for the railroad; (3) to eliminate unessential use of box cars; and (4) to expedite the movement of carload freight in the territory involved (R. 90).

The appellant Willett Company, which is exclusively engaged in providing motor truck service for the Pennsylvania Railroad (R. 162), already operates for the Pennsylvania a service similar to that here proposed, over twenty-five routes in Indiana and adjacent States, under Interstate Commerce Commission authority and local State authority (R. 86). The present application involves merely an extension of the same type of service to points on the line of the Pennsylvania Railroad between Fort Wayne, Indiana, and Mackinaw City, Michigan, where this service is not now being provided (R. 93).

The case was duly heard under the statutory procedure (Sec. 205 of the Act, 49 Stat. 548) before a "Joint State Board," assisted by an examiner of the Interstate Commerce Commission (R. 72), and a proposed report was issued recommending, in substance, the granting of the

It is from this order of the three-judge district court that The Willett Company of Indiana, Inc., applicant in the original case, The Pennsylvania Railroad Company, intervenor before the Commission and in the court below, the Interstate Commerce Commission, and the United States of America are now appealing (R. 46-47).

The Commission in granting the application (R. 6) held substantially that the applicant had established public convenience and necessity for the proposed operation as required by the Interstate Commerce Act, and that the applicant was therefore entitled to a certificate of public convenience and necessity. In its order, the Commission stated the following conclusion (R. 12):

"We find that the present and future public convenience and necessity require operation by applicant as a common carrier by motor vehicle, in interstate or foreign commerce, of general commodities, between the points and over the routes shown in the appendix hereto, serving intermediate and off-route points which are stations on the rail line of The Pennsylvania Railroad Company, subject to the following conditions:

- "1. The service to be performed by applicant shall be limited to service which is auxiliary to, or supplemental of, rail service of The Pennsylvania Railroad Company, hereinafter called the railroad.
- "2. Applicant shall not serve any point not a station on the rail line of the railroad.
- "3. No shipments shall be transported by applicant as a common carrier by motor vehicle between any of the following points, or through or to or from more than one of the said points: Fort Wayne, Ind., and Grand Rapids, Mich.
- "4. All contractual arrangements between applicant, the railroad, and the American Contract and Trust Company," shall be reported to us and shall be subject to revision, if and as we find it necessary in order that such arrangements shall be fair and equitable to the parties.
- "5. Such future specific conditions as we, in the future, may find it necessary to impose in order to restrict applicant's operation to service which is auxiliary to, or supplemental of, rail service."

The findings and order of the Commission were based upon testimony presented before the Joint Board to the following effect:

The underlying purpose of the application is to improve and supplement the service of the Pennsylvania Railroad to its patrons through the utilization of motor trucks in substitution for local way freight service by rail. As stated by Witness Christie, Supervising Agent of the

^{*}The American Contract and Trust Company is a wholly-owned subsidiary of The Pennsylvania Railroad Company, and all the stock of the Willett Company of Indiana, Inc., is owned by the American Contract and Trust Company (R. 145-46).

Pennsylvania Railroad specially assigned to the problem of utilization of motor trucks to supplement the railroad's service (R. 85, 90):

"The purpose of The Pennsylvania Railroad in this matter is to supplement the rail service, by truck, service, in order that we may expedite the movement of freight for the patrons of the railroad; to make it a more economical operation; and to eliminate the use of box cars which will result in heavier loading of cars on our railroad."

The proposed substituted motor vehicle service will result in expediting service, inbound and outbound, to Pennsylvania Railroad patrons by twenty-four to forty-eight hours (R. 98-105; Ex. No. 6, R. 428). There are instances where a local freight train operates on a tri-weekly basis, i. e., in one direction three days a week, and in the reverse direction three other days a week. Under the proposed operation daily service will be afforded in both directions (R. 116). Also in many instances the volume of freight is so light that it does not justify the use of a box car to a particular local point, and the freight has to be held over in the freight house for one or two days. Under the proposed operation, this freight will move out promptly day by day (R. 117).

Railroad operating economies which will result from instituting the proposed service come under a number of different headings. Witness Christie explained these (R. 362-64), which may be summarized as follows:

Saving in car miles
Saving in overtime
Saving in locomotive expense
Saving in the stowing of freight
Saving in yard switching
Saving in second handling of freight
Saving in engine expense
Saving in box car use.

This witness also stated that the direct out-of-pocket savings to the railroad would amount to more than the total cost to the Willett Company for performing the truck service (R. 388).

A very substantial saving would be brought about as a result of a material decrease in the use of box cars which in local way freight service are generally very eightly loaded. It has been shown by experience that the average loading in box cars of less-than-carload freight has improved very materially as a result of the use of substituted service by truck. For example, in 1937 the average load was only 2.84 tons per car. In 1941, the average load was 7.97 tons per car, and at times the average load on certain runs has gone as high as 8.63 tons per car (R. 91). In addition to the increase in the average load per car, and the resulting efficiency in the utilization of railroad equipment, the release of box cars for use in carload business has become increasingly important, not only ' in connection with service to private industry in ordinary times, but for the national defense (R. 91). The orders of the Office of Defense Transportation in this respect, designed to make possible the maximum utilization of railroad equipment, are matters of public knowledge.

By elimination of local way-freight merchandise or "peddler" cars, service to Pennsylvania Railroad patrons can be very much improved in connection with car-load movements. Under all-rail operations these cars have to be handled in the same trains with cars of car-load freight, and it is a difficult matter to make a schedule for local freight trains that will best serve the convenience of both car-load shippers and less-than-carload shippers at the same time (R. 123). By eliminating the way-freight or "peddler" cars from the local freight trains, the rail-road is enabled to schedule local freight trains, hauling car-load freight in the way best calculated to serve the convenience of car-load patrons, both inbound and out-bound, and this is also of importance in making connections at interchange points with other trains (R. 123).

By the utilization of motor trucks in substitution for local way-freight or "peddler" cars, the result will be not only to expedite service to patrons of the railroad and to effect operating economies, but also to coordinate the service of the Pennsylvania Railroad and the service of The Willett Company of Indiana into a closer relationship, and at the same time the services of the Pennsylvania Railroad will be supplemented by the use of motor trucks (R. 124).

The record indicates (R. 95, Ex. 5, R. 427) the estimated tonnage to be handled under the proposed operation, based on a study of present tonnage movement and probable future movements. The record also shows that commodities generally will be hauled but limited to less-than-carload freight to the exclusion of car-load freight (R. 92-93).

All freight to be handled in the proposed operations will be less-than-car-load freight moving under railroad way-bills, railroad bills-of-lading, and railroad tariffs. All freight will originate as railroad freight. It will not originate as truck freight (R. 92, 106-7). All relations with shippers and consignees will be on the part of The Pennsylvania Railroad Company. The Willett Company of Indiana will have no direct contact with the shipper or consignee, and will not use any bills-of-lading or file any tariffs quoting rates to the general public. It will merely handle railroad freight between stations of the railroad as. it now does on the existing duly authorized twenty-five routes over which it already operates in the same type of service (R. 106-107). The only tariff publication by The Willett Company of Indiana, and by The Pennsylvania Railroad Company, with respect to this operation, will consist of the naming of the new routes, and the listing of the: Willett Company and the railroad in a tariff known as Kipp's Directory, generally designated as National Substituted Freight Service Directory 1A, in conformity

with the ruling of the Interstate Commerce Commission in Substituted Freight Service, Ex Parte 129, 23 I. C. C. 683 (1939) (R. 108-110).

The testimony of witnesses for The Pennsylvania Railroad Company was to the effect that the railroad preferred operation in the proposed service by The Willett Company of Indiana, or some other motor carrier subsidiary of the Pennsylvania, to the exclusion of independent truckers, and regarded the use of the latter as impracticable (R. 124-25, 143). The railroad has in all other cases of a similar character sought to present oral evidence as to the reasons for this preference, but in the instant case the Joint Board excluded such testimony as irrelevant, upon objection by protestants (R. 364, 367). In connection therewith, counsel for The Willett Company of Indiana made an offer of proof outlining the most substantial reasons (R. 365-366).

The Pennsylvania Railroad is utilizing an independent operator serving two of the points involved in the pending operation, namely, Cadillad, and Lake City, Michigan. These two points are not being satisfactorily served, and the Pennsylvania Railroad desires the service of the Willett Company in order to expedite service to the railroad's patrons and render a more generally satisfactory service in connection with rail operations (R. 390-391). Other evidence showed that none of the existing independent operators who protested the application served all of the points in question or the railroad's line which would be served by the applicant (R. 442-43, 518; 598-99, 637-38, 647-48, 651-53, 656-58, 662). There was also evidence to the effect that existing operating schedules of independent motor carriers would not fit properly into connecting rail movements, and that substantial rearrangements would be essential for proper coordination (R. 637-38, 652-53).

The applicant presented forty-two shipper witnesses, four of whom testified orally (R. 239-309), while the testimony of the other thirty-eight was inserted in the record

by stipulation of the parties, in accordance with the practice usual in such cases (R. 309).

The four shipper witnesses who actually testified presented evidence on direct and cross-examination to the general effect that they were in business on the line of : the Pennsylvania Railroad which would be served by the proposed substituted service, and had been patrons of the Pennsylvania Railroad for a good many years with respect to both inbound and outbound shipments (R. 240-44, 262-66, 290-91, 302-4). They desire to continue to use the Pennsylvania Railroad, particularly for the longer hauls, and any improvement in service offered by the Pennsylvania Railroad would be beneficial to them, and in fact is becoming more and more of a necessity to them in order to meet the competition of other persons in the same line of business, particularly those located on the main through lines of the Pennsylvania and other railroads (R. 261, 266, 268, 273, 304).

As to existing and presently available truck service by independent motor carriers, they testified generally that local truck service was for the most part satisfactory, but that truck service for the longer hauls was not satisfactory, and they preferred to use transportation offered by rail for the longer hands, some of which extended to points in various parts of the country, both on inbound and outbound trips (R. 244, 265-67, 270-72). Anything that would improve from their standpoint the efficiency of rail service would be of very great convenience to them, as well as an absolute necessity in many instances (R. 244, 268, 294, 304). The proposed service to be offered by the railroad through the utilization of The Willett Company of Indiana in so-called substituted truck service for rail peddler-car service had been explained to them, and they appeared at the hearing in support of the application. It was their understanding that the service rendered to them, both on inbound and outbound shipments, would be expedited/to the extent of twenty-four to forty-eight hours.

and in some instances they would receive a daily service instead of a tri-weekly service (R. 266, 274, 276, 294, 304).

The testimony of these witnesses also showed that rail transportation is preferable to the shipper because the shipper there deals with a single dependable transportation agency, viz., the railroad, which is responsible for shipments for the entire journey (R. 254-55). Another reason for shipper preference of rail transportation lay in the fact that a great many shipments, particularly to or from small points, were relatively small in volume per shipment, and also irregular in frequency of shipment. Truck lines naturally do not desire this type of traffic, but rather prefer truck-load shipments, or at least regular daily shipments, and between major points (R. 483, 495, 642, 656, 662). On the other hand, under the proposed operation the railroad would afford regular daily service on an expedited basis, regardless of the amount of the individual shipment or the frequency of the individual shipment (R. 250-52).

Following the testimony of the four witnesses above referred to, a stipulation was entered into by agreement of parties as follows (R. 309):

"It is stipulated and agreed by and between the applicant and protestants herein, by their respective counsel, that there are present in the hearing room at this time, for the purpose of testifying on behalf of the applicant, certain witnesses, which witnesses have been duly sworn, and, if called to the witness stand, would testify substantially as hereinafter set forth in the written stipulations, copies of which are filed herein. It is hereby further stipulated and agreed that the written statements of proposed testimony of each of said applicant's witnesses for whom a written statement of testimony is submitted and made a part of the record herein, may be treated and considered as the testimony of each such witness, as though the same had been presented by formal testi-

mony in question and answer form, and that the answers given on cross-examination by each such witness would generally and substantially be the same as the answers previously given by all of the applicant's shipper witnesses to questions propounded to them by protestants attorneys this day. It is further stipulated and agreed that that portion of the testimony of the witness, Edward F. Dinkel, insofar as his testimony pertained to his service in performing pick-up and delivery service at Conklin, Michigan, for The Pennsylvania Railroad Company, shall not apply to the balance of the testimony of the applicant's shipper witnesses. Said written stipulations, pertaining to the witnesses hereinafter enumerated, are as follows:

Each and every one of the thirty-eight stipulations embodied in the record contains in substance the following for each witness whose testimony was stipulated (R. 309-46):

- 1. That he is acquainted with the inbound and outbound shipments which his company ships.
 - 2. That his business does now and has for years used the services of The Pennsylvania Railroad Company over one of the routes described in the application (in each instance naming the number of years and specifically stating the exact route).
 - 3. That the same outbound and inbound shipments which his company ships and receives over The Pennsylvania Railroad to and from the city in which his business is located, are as follows: (In each instance there was named the approximate number of shipments, the weight of each, and the origin or destination points as the case might be; in total, amounting to millions of pounds of freight, constituting commodities, generally, in interstate commerce).

- 4. The witness has had explained to him the service to be rendered in the rail-truck service by The Willett Company of Indiana, Inc., for The Pennsylvania Railroad Company, over this route, serving his business.
- 5. He has also had explained to him that this railtruck service serving his business, if instituted, will expedite the movement of the shipments to and from his business by The Pennsylvania Company 24 hours or more.
- 6: If such service is authorized by the Interstate Commerce Commission, it will serve the convenience and necessity of his business and his husiness will continue to use The Pennsylvania Railroad service in conjunction with the rail-truck service described in the application.

It was also stipulated that under cross-examination these witnesses would respond in general in the same manner as did the four witnesses who actually testified, with respect to their particular business and particular localities (R. 309).

Samples of cross-examination were included in the record substantially as follows:

We (the shippers) don't use many of the truck lines. Present service of The Pennsylvania Railroad and the various truck lines that are serving us are adequate unless they could improve on the service in some way of other, of course (R. 246-47).

The truck service we receive is, in some instances slower than rail; it takes one day less by rail, in some instances. In some of these instances, we have suggested to the shipper to change the truck routing; some of the truck lines serve in one direction only (R.-250-252).

The only complaint against The Pennsylvania Railroad from certain points is that of damage; it is no fault of The Pennsylvania Railroad (R. 245, 253), Some of the truck lines serving us are good and we have no complaint to make against that service (R. 246-247).

Regarding damage claims when shipments are handled directly by the railroads all the way through, and you have to have a damage claim, you will be much more apt to get a quicker return from handling your damage claim with one Claim Department than you will if you have to go through two or three trucking companies with it (R. 254-55).

Some of the truck lines serving our town have no regular schedule (R. 268).

We are satisfied with our truck service by short haul (R. 269-270).

We are not using the service of common motor carriers on long hauls, except when it is routed that way, but we prefer to ship long haul by rail if we can get it that way (R. 269-70).

As far as our interest is concerned in this proposed service, it is that we need a 24-hour speeding up of the service. If they speed up the service to us as far as the movement of any particular shipment is concerned, that is what we request. We are interested in seeing the railroads speed up this service (R. 276).

In opposition to the foregoing testimony introduced in support of the application, the protesting motor carriers presented evidence through their own witnesses, and by cross-examination of the applicant's witnesses, designed to show: (1) that shippers at points to be served by the proposed substituted service were reason-

ably well satisfied with, and had no substantial complaint against, the present rail service rendered through peddler or local way-freight cars; and (2) that one or more existing independent motor carrier operators were already providing motor carrier service to most of the points intended to be served by the proposed substituted service. However, as already pointed out (p. 9 above), the testimony showed that none of the existing independent motor operators served all the routes sought in the application. One of the protesting independents, the Inter-State Motor Freight System, was engaged in performing substituted service of the type proposed for a rail competitor of the Pennsylvania, the Pere Marquette Railroad (R. 643-50).

Certain shipper witnesses presented on behalf of the profestants testified that they found the existing motor service attractive. Some testified that they preferred it to the local rail way freight service because it was quicker. Practically all, however, testified on cross-examination by applicant's counsel that if the rail service could be expedited as claimed by the applicant, this would be of value and benefit to their business (R. 477, 485, 488, 496-97, 515, 528, 533, 535, 542, 551).

The Commission, after fully and thoroughly reviewing the evidence in its report (R. 6-12), reached the following conclusions on the relevant issues between the parties:

- 1. "The railroad, through its subsidiary, merely seeks the substitution of a more efficient for a less efficient means of service." (R. 11.)
- 2. "The motor carrier service proposed by applicant, operated in close coordination with the railroad's service, will effectuate a reduction in cost, and will result in an increase in efficiency in the transportation over the routes herein considered, which will inure to the benefit of the general public.

Furthermore, it does not appear that the restricted service would be directly competitive or unduly prejudicial to the operations of any other motor carrier." (R. 11.)

3. "While several motor carriers operate over portions of the routes involved and in some cases. perform similar station-to-station service for the Pere Marquette Railroad, it must be borne in mind that the railroad [i. e., The Pennsylvania Railroad] has been and is transporting the traffic in question between its stations and is under an obligation to continue to do so. Applicant's service will be of a different character from that performed by motor carriers generally. It will be limited to the handling of merchandise traffic to and from points on the lines of the railroad in substitution for train service. To utilize the facilities of protestant motor carriers. the railroad would be required to make arrangements with several of them, each performing a more or less disjointed part of the service." (R. 10-11.)

Accordingly, the Commission found that "the present and future public convenience and necessity require operation by applicant as a common carrier by motor vehicle" in the manner proposed in the application and subject to the restrictions and conditions set forth above, for the purpose of providing substituted motor service for the handling of less-than-carload traffic in local way-freight service to and from stations on the rail line of The Pennsylvania Railroad Company (R. 12). The authority to engage in the operation in question was therefore granted, and protestants later petition for reconsideration was denied (R. 916).

The Commission's order having been made and entered, one of the protesting carriers in the proceeding before the Commission, Harry, A. Parker, doing business as "Parker Motor Freight," on February 21, 1944, instituted this suit by filing his bill of complaint in the District

Court for the Southern District of Indiana (R. 1-6), wherein it was alleged that the order of the Commission was "based on improper and unlawful conclusions of both fact and law," and upon findings having no foundation in the record, and praying among other things that the court adjudge the said order to be null and void, and that it enjoin, set aside, annul and suspend the same (R. 5).

A specially constituted three-judge court having been duly convened under the provisions of the Urgent Deficiencies Act to hear the cause (R. 15), motions for leave to intervene in support of the complaint were filed by certain trucking companies and associations of trucking companies, viz., Norwalk Truck Line Company, Regular Common Carrier Conference of The American Trucking Associations, Inc., Motor Carriers Central Freight Association, Consolidated Freight Company, and Creston Transfer Company. These motions were granted (R: 16-17, 28, 32). On April 21, 1944, the United States of America filed its answer to the complaint, asking that the relief prayed for be denied (R. 20). The Interstate Commerce Commission (R. 19), The Pennsylvania Railroad Company (R. 22), and The Willett Company of Indiana, Inc. (R. 27) intervened in opposition to the complaint and filed answers.

The statutory court heard the case on the record as made before the Commission, and on June 30, 1944, made an order, accompanied by findings of fact and conclusions of law but without opinions setting the Commission's order aside (R. 44-46). On August 22, 1944, the Interstate Commerce Commission. The Willett Company of Indiana, Inc., and The Pennsylvania Railroad Company prayed for an appeal to this Court (R. 46-47), and the appeal was allowed on the same day (R. 49). On August 25, 1944, the United States likewise prayed for an appeal (R. 53), and the appeal was allowed (R. 54). On November 6, 1944, this Court noted probable jurisdiction (R. 918).

QUESTIONS PRESENTED.

- 1. Whether or not the Interstate Commerce Commission's established policy, developed over a period of years and repeatedly applied, of granting to a motor carrier subsidiary of a railroad limited permission to operate in substituted service for the railroad on a showing that improved service to shippers and increased operating economy and efficiency will result, is authorized by the provisions of the Interstate Commerce Act and the declaration therein that the policy of Congress is to promote economical and efficient transportation service to the end of developing, coordinating and preserving an adequate national transportation system?
- 2. Whether or not the Interstate Commerce Activequires, as a prerequisite to permission to operate in such substituted service, that proof be made that the facilities of existing independent motor carriers are physically inadequate to handle the freight in question."
- 3. Whether or not there is sufficient foundation in the law and the facts to support the Commission's exercise of administrative discretion in this case, as manifested in its findings and order, whereby it granted limited permission to a motor carrier subsidiary of a railroad to engage in substituted service for the railroad, in accordance with the established policy of the Commission?

SUMMARY OF ARGUMENT.

The Interstate Commerce Commission has evolved over a period of years, a policy of permitting railroads to expedite and improve their service to shippers and increase the economy and efficiency of their operations by

substituting motor vehicle for rail handling in the service of transporting less-than-carload-movements of package freight to and from local way-stations on the railroads' lines—a service the railroads are obliged to render—and thus coordinating and supplementing the railroads' all rail service with such use of motor vehicles. At the same time the Commission, in developing this policy, has taken steps to insure protection of the general over-the-road service of independent motor carriers against railroad competition in that field. This established policy of the Commission is embodied in its present practice of granting to a railroad, or its wholly owned motor carrier subsidiary, limited permission to engage in such substituted motor vehicle service for the railroad, subject to certain conditions and restrictions.

In developing this policy of permitting railroads to use, either directly or through motor carrier subsidiaries. motor vehicles in supplement of and coordination with their own service, for the benefit of the public and the improvement of railroad operations, the Commission has had before it the declaration in the Interstate Commerce Act that it is the policy of Congress to "promote " economical and efficient service and foster sound economic conditions in transportation and among the several carriers. * * all to the end of developing, coordinating and preserving a national transportation system by * * * highway and rail, as well as other means." The Commission has also had before it the provisions in the Interstate Commerce Act under which a railroad may acquire ownership and control of a motor carrier where the Commission finds that such acquisition will enable the railroad "to use service by motor vehicle to public advantage in its operations and will not unduly restrain competition."

- Exercising the administrative discretion which this Court has held to be vested in the Commission to carry out the provisions and policy of the Interstate Commerce.

Act, the Commission has been guided by this declared Congressional policy and these statutory provisions in its interpretation of the statutory standard applicable where authority to engage in motor vehicle operations is sought, viz., public convenience and necessity, and has accordingly found that public convenience and necessity warrant the granting of permission to a railroad or its motor carrier subsidiary to engage in substituted service operations, under appropriate circumstances.

In order to insure that such proposed substituted service by a railroad or its motor carrier subsidiary will "promote economical and efficient service" and will aid in the development and coordination of the various means of transportation into an improved transportation system, the Commission has in such cases required a showing, first, that the proposed substitution of motor vehicle for rail handling will result in improved and more economical and efficient service, and second, that the proposed substituted service and the anticipated improvement in the railroad's service resulting therefrom cannot be satisfactorily supplied by existing independent motor carriers. At the same time, in order to insure that the railroad will not use its or its subsidiary's motor vehicles to engage in competition with the general over-the-road service of existing independent motor carriers, the Commission has in such cases attached conditions designed to limit the proposed substituted service to service which will be auxiliary and supplemental to the railroad's service and to prevent the railroad or its motor carrier subsidiary from engaging in general over-the-road truck operations.

The present case grows out of an application by a motor carrier subsidiary of a railroad to engage in substituted service for the railroad. The Commission's findings, supported by evidence, establish that the requisite showing of improvement in service and inadequacy of existing motor carriers has been made in the present ease, and therefore the case falls squarely within the policy

established by the Commission for handling such cases. Since the evidence and the findings show that the Commission's action in granting the authority sought, subject to the usual conditions, will result in improvement of the railroad's service, from the standpoint of the shipping public, and in increased economy and efficiency of the railroad's operations, this action by the Commission is clearly in accord with the applicable provisions of the Act and in furtherance of the Congressional policy declared therein. That policy contemplates, and the Commission's action in this case will promote, the development of an improved and befter coordinated transportation system and will encourage healthy competition. On the other hand, the opposing position of the appellees-protesting independent motor carriers-which was accepted by the court below, would result in the hindering of progress in the transportation field and the stifling rather than the encouraging of healthy competition, with the result that the declared Congressional policy would be defeated.

ARGUMENT:

I.

THE LAW.

The Established Policy of the Interstate Commerce Commission, to Permit Railroads, under Appropriate Circumstances, to Substitute Motor for Rail Movement of Local Less-than Carload Freight and to Employ for this Purpose Motor Carriers Controlled by Them, is in Accord with and in Furtherance of the Provisions and Declared Policy of the Interstate Commerce Act, Because it Makes Possible the Coordination of Rail and Motor Service to Public Advantage and Provides an Improved Service Not Otherwise Attainable.

This proceeding is an attack, successful in the court below, on a policy which the Interstate Commerce Commission, acting under the broad powers vested in it by the Interstate Commerce Act, has developed and adopted over a period of years, for the purpose of granting a limited opportunity to railroads to improve their service to shippers and increase the efficiency and economy of their operations by supplementing those operations with the use of motor vehicles.

It is the declared policy of Congress to promote economical and efficient transportation, and to develop, coordinate and preserve a national transportation system by highway and rail, as well as by other means. In furtherance of this policy, Congress has empowered the Commission to issue operating authority to motor carriers, under circumstances found by the Commission to be appropriate, and has also empowered the Commission to permit a railroad to acquire ownership of or an interest in a motor carrier where consistent with the public interest, and where the railroad will thereby be enabled to use motor vehicle service to public advantage in its operations.

In recent years there has developed a new method of transportation service, wherein motor carrier operations are used in coordination with rail operations, by the substitution of motor vehicle hauls for local short-distance rail movements of less-than-carload freight. portation of less-than-carload freight to, from and between local way-stations on a railroad's line is of course a service which the railroad is obligated to render. The method employed by railroads in the past in rendering. this service has been that of so-called "peddler cars" in freight trains, into and out of which cars less-than-carload packages (barrels, boxes, cases and the like) are loaded and unloaded at the platforms of the several freight stations along the line. In territory where the traffic volume is thin, these peddler cars are of necessity lightly loaded. which results in wasteful expense in the hauling of unfilled cars, and also causes serious delays in the movement of the trains in which these cars are hauled, because of the frequent stops required for loading and unloading. This method of handling local less-than-carload freight in peddler cars thus involves a substantial waste in the use of cars and motive power, and in the time of train crews, as well as in the large amount of transfers and switching operations required. It likewise results in inevitable delay and tardiness in delivery to shippers, since there is not enough freight of this description to permit frequent dispatch of the "peddler cars." It has been found that the use of motor vehicles for the transportation of less-than-carload freight to such local way stations, in substitution for the "peddler" car service, results in better and faster service to the shipper and in greater economy and efficiency of operation from the standpoint of the carrier.

The Interstate Commerce Commission, aware of the improved service and increased economy and efficiency of operation resulting from the use of motor vehicles in coordination with rail operation in the foregoing manner. and in furtherance of the declared national transportation policy to promote economical and efficient service and develop and coordinate a national transportation system by highway and rail, has permitted such coordinated operations, subject to certain restrictions which are imposed for the purpose of preserving a proper relationship between rail and motor vehicle operations, while permitting the desired coordination. In a series of cases extending over a number of years, the Commission has worked out a limited type of operating certificate, which it has granted, on a proper showing, to railroads or their motor carrier subsidiaries, in order to permit the operation of motor vehicles in substitution for the movement of less-than-carload freight in local way-freight trains.

A. Under the Declared Policy and Provisions of the Interstate Commerce Act, the Commission is Vested with Broad Authority to Foster Coordination of Motor and Rail Transportation for the Purpose of Improving Service, Promoting Economy and Efficiency of Operation, and Developing an Adequate National Transportation System, to the Public Advantage.

That Congress intended to permit, and indeed to encourage, the coordination of motor with rail transportation, appears plainly from the declaration of policy with which it prefixed the Motor Carrier Act of 1935. That declaration of policy provided in part (49 Stat. 543; see Appendix hereto, p. 1a):

"It is hereby declared to be the policy of Congress to regulate transportation by motor carriers in such manner as to "improve the relations' between, and coordinate transportation by and regulation of, motor carriers and other carriers." (Emphasis supplied.)

By the Transportation Act of 1940, this declaration of policy was consolidated, with other declarations of policy from other parts of the Interstate Commerce Act, into one general declaration of a national transportation policy (Transportation Act of 1940, Secs. 1, 17 (a): 54 Stat. 899). In this general declaration of the national transportation policy are included the following provisions (54 Stat. 899; see Appendix hereto, pp. 5a-6a):

"It is hereby declared to be the national transportation policy of the Congress to provide for fair and impartial regulation of all modes of transportation subject to the provisions of this Act, so administered as to recognize and preserve the inherent advantages of each; to promote safe, adequate, economical and efficient service and taster sound economical economical and efficient service and taster sound economical econ

nomic conditions in transportation and among the several carriers • • all to the end of developing, coordinating, and preserving a national transportation system by water, highway, and rail, as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal service, and of the National defense. All of the provisions of this Act shall be administered and enforced with a view to carrying out the above declaration of policy." (Emphasis supplied.)

Further manifestation of the Congressional intent to foster and encourage coordination of rail and motor vehicle methods of transportation was contained in Sec. 213 (a) of the Interstate Commerce Act. As originally enacted in the Motor Carrier Act of 1935, this section provided in part (49 Stat. 555; see Appendix hereto, pp. 4a-5a):

"It shall be lawful, under the conditions specified . . for a carrier by railroad . . * * to * . * acquire control of, any motor carrier, or to purchase, lease or contract to operate its properties, or any part thereof. * * * (1) * * * If the Commission finds that the transaction proposed will be consistent with the public interest and that the conditions of this section have been or will be fulfilled. it may enter an order approving and authorizing such consolidation, merger, purchase, lease, operating contract or acquisition of control. * * however. That if a carrier other than a motor carrier is an applicant . * * the Commission shall not enter such an order unless it finds that the transaction proposed will promote the public interest by enabling such carrier other than a motor carrier to use service by motor vehicle to public advantage in its operations and will not unduly restrain competition." (Emphasis supplied:)

In the Transportation Act of 1940, these provisions were combined with other consolidation and acquisition provisions of the Act and rewritten into a new Section 5, which provides generally for the acquisition of one carrier by another under certain conditions, upon Commission approval, where the proposed acquisition is found by the Commission to be consistent with the public interest. The proviso clause last quoted above from the original Section 213, was carried over into the new Section 5 in the following form (54 Stat. 906; see Appendix hereto, pp. 7a-Sa):

"Provided, that if a carrier by railroad subject to this part " is an applicant in the case of any such proposed transaction involving a motor carrier, the Commission shall not enter such an order unless it finds that the transaction proposed will be consistent with the public interest and will enable such carrier to use service by motor vehicle to public advantage in its operations and will not unduly restrain competition." (Emphasis supplied.)

The plain implication to be derived from all these provisions when read together is that a rail carrier may be permitted, either directly or through a motor carrier acquired by it, to supply service by motor vehicle in coordination with its own service where it is found by the Commission that such supplying of motor vehicle service will be "to the public advantage" in the operations of the rail carrier, and will not unduly restrain competition. Where the Commission so finds, it is the Congressional intent that the Commission may permit coordination of the rail and motor vehicle services, even to the extent of allowing the rail carrier to acquire complete control of a motor carrier for the purpose of using the latter in conjunction with its rail operations.

- That the cordination of motor with rail transportation, by a railroad's use of motor service where advantageous.

results will ensue, was one of the specific Congressional objectives in the enactment of the Motor Carrier Act, appears plainly from the legislative history of that Act. The Interstate Commerce Commission, having conducted an extensive investigation upon the subject of "Coordination of Motor Transportation", had the following to say, in its annual report to Congress for 1932 (House Doc. No. 430, 72nd Congress, 2nd Session, pp. 21-22):

"In our judgment there is great opportunity for the advantageous use of motor trucks and busses to supplement or in substitution for railroad service, and we welcome the numerous experiments which are being made in this direction. " We found that transportation by motor vehicles, busses, and trucks, over the public highways is, within certain distances, and in certain respects, a superior service, and that the rail and water lines should be encouraged in the use of this instrumentality of commerce wherever such use will promote more efficient operation or improve the public service." (Emphasis supplied.)

In testifying before the House sub-committee on the bill which ultimately became the Motor Carrier Act, Commissioner Eastman made the following statement (Hearings on H. R. 5262 and H. R. 6016, 74th Congress, 1st Session, February-March, 1935, p. 46):

"I hope and expect to see the railroads utilize these motor vehicles in their own operations to a much greater extent than they now do. They are doing it to a considerable extent; they operate some; they have abandoned branch lines and they are operating busses instead of trains in some cases. They are utilizing motor vehicles in their terminal operations and they have used them as a substitute for way freight service, in some cases. My own rick is

^{*}The Commission's formal report with respect to this investigation appears in Coordination of Motor Transportation, 182 I. C. C. 263 (1932)

that there will be found many more ways where they can be used to advantage in combination with railroad service and I hope to see the time when the railroads will utilize these opportunities fully." (Emphasis supplied.)

With respect to the comparable bill in the Senate, Commissioner Eastman testified as follows (Hearings on S. 1629, S. 1632 and S. 1635, 74th Congress, 1st Session, February-March, 1935, p. 85):

"My own personal opinion is that the railroads are going more and more to find that they can use trucks and busses to advantage in connection with their own service—supplement it and substitute for it where they can do the job better than the rails can do it." (Emphasis supplied.)

Again, in the 1938 hearings on the bill proposing amendments to the Motor Carrier Act, Commissioner Eastman, in discussing the significance of the provisions of Sec. 213 (a), quoted above, said (Hearings on H. R. 9739, 75th Congress, 3rd Session, May, 1938, p. 34):

Without any question there are certain things that the trucks can do to advantage in connection with rail operations. The railroads which have gone into the trucking business are more and more using trucks in place of their local way freight trains. In other words, instead of distributing the station-station business, in the case of the smaller stations, by these local trains, they do it by truck instead and can do it more expeditiously and more cheaply. I have heard some railroad men say that the day of the way freight train is passing, and soon there will be none; that all of that business will be done by trucks." (Emphasis supplied.)

Similar expressions of Commissioner Eastman's views on this subject appear in the reports which he made in his capacity as Federal Coordinator of Transportation in 1934, and 1935.*

These statements by Commissioner Eastman leave no doubt that, in his judgment, the use by railroads of motor vehicles in conjunction with their rail operations, and particularly in substitution for local trains in way-freight service, was decidedly to the public advantage and should be permitted under the Motor Carrier Act. With these statements before it, and in the light of the provisions and policy declarations of the Act, Congress must certainly have intended, in enacting the Act, that the results which Commissioner Eastman thus described as desirable and to the public advantage should be permissible under the Act.⁺

Ender the provisions of the Act, the determination of whether or not, and under what conditions, a proposed coordinated motor vehicle-rail operation shall be permitted is, of course, left to the discretion of the Commission. In construing the Motor Carrier Act and the declared policy of Congress with respect to motor carrier transportation

^{*}See Second Report of Federal Coordinator of Transportation, Sen. Doc. No. 152, 73rd Congress, 2nd Session, pp. 18-19, and Third Report of Federal Coordinator of Transportation, House Duc. No. 89, 74th Congress, 1st Session, pp. 6, 117.

[†]Both the Senate and House Reports on the bills which became the Motor Carrier Act of 1935 referred not only to the evidence presented at the Congressional hearings but also to the reports of the Federal Coordinator and the annual reports of the Commission and its investigation on this subject, as constituting the principal sources of information relied on the Senate and House Committees in recommending enactment of the Motor Carrier Act (Senate Report No. 482, 74th Congress, 1st Session, pp. 2-3; House Report No. 1645, 74th Congress, 1st Session, pp. 2-5). The Senate Report includes the following significant language (p. 3):

[&]quot;The ultimate objective of the entire program is a system of coordinated transportation for the Nation which will supply the most cherent means of transport and turnish service as cheaply as is consistent with fair treatment of labor and with earnings which will support adequate credit and the ability to expand as need develops and to take advantage of all improvements in the art."

and transportation in general, this Court has found, in the broad declaration of policy and the broad powers vested under the Act in the Intersente Commerce Commission, an intent on the part of Congress to allow to the Commission a wide measure of administrative discretion in carrying out the declared Congressional policy, to be exercised in the light of the Commission's expert knowledge and informed experience. As recently as McLean Trucking Co. v. U. S., 321 U. S. 67 (1944), this Court, in holding that the Commission's approval of a motor carrier consolidation was not struck down by the antitrust laws, has discussed at length the implications of the Congressional declaration of transportation policy, and has said, speaking through Mr. Justice Rutledge (pages 80-88):

"The national transportation policy is the product of a long history of trial and error by Congress in attempting to regulate the nation's transportation tacilities beginning with the Interstate Commerce. Act of 1887. For present purposes it is not necessary to trace the history of/those attempts in detail other than to note that the Transportation Act of 1920 marked a sharp change in the policies and objectives embodied in those efforts. Theretofore, the effort of Congress had been directed mainly to the prevention of abuses: particularly those arising from excessive or discriminatory rates'; and emphasis on the preservation of free competition among carriers was part of that effort. The Act of 1920 added 'a new and important object to previous interstate commerce legislation.' It sought affirmatively to build up a system of railways prepared to handle promptly all the interstate traffic of the country, Dayton-Goose Creek R. Co. v. United States, 263 U. S. 456; Texas & P. R. Co. v. Gulf C. & S. F. R. Co., 270 U. S. 266. 277. And in administering it, the Commission will to

be guided primarily by consideration for 'adequacy of transportation service, .* * its essential conditions of economy and efficiency, and * * * appropriate provision and best use of transportation facilities * *.' New York Central Securities Corp. v. United States, 287 U. S. 12, 25.

Since that initial effort at reshaping regulation of railroads to 'insure . . . dequate transportation 'service,' Congress has extended federal regulation in connection with other forms of transportation and has elaborated more fully the objectives to be achieved by its legislation. In 1935 it enacted a comprehensive scheme of regulation for motor carriers, designed to result in 'a system of coordinated transportation for the Nation which will supply the most efficient means of transport and furnish service as cheaply as is consistent with fair treatment of labor and with earnings which will support adequate credit and the ability to expand as need flevelops and to take advantage of all improvements in the art.' The policy which was to guide the Commission in administering that Act was fully stated and has since been absorbed into the equally full statement of the: National Transportation Policy. That policy, which is the Commission's guide to the public interest. cf. New York Central Securities Corp. v. United States, 287 U. S. 12; State of Texas v. United States. 292 U. S. 522, demands that all modes of transportation subject to the provisions of the Interstate Commerce, Act be so regulated as to 'recognize and preserve the inherent advantages of each; to promote safe, adequate, economical, and efficient service and foster sound economic conditions in Transporta-otion and among the several carriers; to encourage the establishment and maintenance of reasonable charges for transportation services, without unjust discriminations, undue preferences of advantages, or

unfair or destructive competitive practices; all to the end of developing, coordinating, and preserving a national transportation system by water, highway, and rail, as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense. 54 Stat. 899, 49 U.S. C. A. note preceding section 1."

"In short, the Commission must estimate the scope and appraise the effects of the curtailment of competition which will result from the proposed consolidation and consider them along with the advantages of inproved service, safer operation, lower costs, etc., to determine whether the consolidation will assist in effectuating the over-all transportation policy: solving these considerations is a complex task which requires extensive facilities, expert judgment and core siderable knowledge of the transportation industry. Congress left that task to the Commission to the end that the wisdom and experience of that Commission may be used not only in connection with this form of transportation, but in its coordination of all other forms.' 79 Cong. Rec. 12207, . The wisdom and experience of that commission,' not of the courts, must determine whether the proposed consolidation is 'consistent with the public interest.' Cf. Interstate Commerce/Commission v. Illinois Central R. Co., 215 U.S. 452: Pennsylvania Co. v. United States, 236 U. S. 351: United States v. Chicago Heights Trucking Co., 310 V. S. 344: Purcell v. United States, 315 U. S. 381. If the Commission did not exceed the statutory limits within which Congress confined its discretion and its findings are adequate and supported by evidence, it is not our function to upset its order." (Emphasis supplied.)

The point has also been well stated by Mr. Justice Jackson, speaking for this Court, in his discussion, in I. C. U. v. Inland Waterways Corp., 319 U. S. 671 (1943), of the general policy provisions of the Interstate Commerce Act, which in their present form were incorporated therein by the Transportation Act of 1940 (p. 691 of 319 U. S.):

"The policy provisions of the Transportation Act of 1940, as well as the specific statutory provisions, provide only standards of considerable generality and some overlapping. It requires administration to recognize and preserve the inherent advantages of each — rail, water, and motor transportation.

Nor are we at liberty to prescribe general attitudes the Commission must adopt towards the exercise of discretion left to it rather than to courts. We decide only whether the Commission has acted within the power delegated to it by law." (Emphasis supplied.)

The specific exercise of administrative discretion which the Commission is called upon to make, in a case like that at bar, where authority is sought by a railroad or a motor carrier subsidiary of a railroad, tosubstitute motor vehicle for rail movement of less-thancarload freight in local way-freight service, is the determination of whether or not a certificate permitting such substituted motor vehicle operation should be granted under Sections 206 and 207 of the Act (49 Stat. 55/1; see Appendix hereto, pp. 1a-ia). Those sections make it necessary for a common carrier by motor vehicle to have a "certificate of public convenience and necessity" from the Commission before it can engage in highway operations (subject-to certain exceptions not relevant here), and they provide that such a certificate shall be issued by the Commission "if it is found fby the Commission! that the applicant is fit, willing and able properly to perform the service proposed; and to conform to the provisions of this part, and the requirements, rules and

regulations of the Commission thereunder, and that the proposed service, to the extent to be authorized by the certificate, is or will be required by the present or future public convenience and necessity? (49 Stat. 551). The statutory standard thus specified for the Commission's guidance is that of "public convenience and necessity."

The phrase "public convenience and necessity" was not new in the Loterstate Commerce Act at the time of the addition thereto, of the Motor Carrier Act of 1935. The same phrase had been used to designate the standard by which the Commission should be guided in passing upon applications for permission to extend or ahandon an existing railroad line or construct a new one, under paragraphs (18), (19) and (20) of Section 1 of the Act. This Court has made it plain that, in applying this statutory standard, the Commission's discretion is to be guided by the purpose and policy of the Act. Thus in Ches. & Ohio Ry. Co. v. United States, 283 U. S. 35 (1931), this Court, in sustaining the Commission's action with respect to certain applications under paragraphs (18) to (20) of Sec. 1, said (page 42):

"There is no specification of the considerations by which the Commission is to be governed in determining whether the public convenience and necessity require the proposed construction. Under the Act it was the duty of the Commission to find the facts and in the exercise of a reasonable judgment, to determine that question. Texas & Pac. Ry. Co. v. Gulf. etc. Ry. Co., 270 U. S. 266, 273."

Recent decisions of this Court have made it plain that the determination of the precise scope of the standard of public convenience and necessity set up in the Motor Carrier Act is a matter primarily for the Commission, in the exercise of its administrative judgment: Alton R.

^{*}These paragraphs establishing the requirement of "public convenience and necessity" for extensions and abandonments were added to the Interstate Commerce Act by the Transportation Act of 1920 (41 Stat. 476).

Co. v. U. S., 315 U. S. 15, 23-24 (1942); Noble v. U. S., 319 U. S. 88, 92-93 (1943).

And in I. C. C. v. Railway Labor, Assn., 315 U. S. 373 (1942), this Court said (page 376):

"The phrase 'public convenience and necessity' no less than the phrase 'public interest' must be given a scope consistent with the broad purpose of the' Transportation Act of 1920, 49 U.S. G. A. §71; et seq.: to provide the public with an efficient and nationally integrated railroad system." (Emphasis supplied.)

Thus, in its use of the phrase "public convenience and necessity" in the Act, Congress obviously intended that the standard of convenience and necessity to be applied by the Commission should embrace measures which tend to promote economical and efficient transportation service and the development and coordination of an adequate national transportation system, and which therefore further the transportation policy declared by Congress.

B. The Commission's Policy of Permitting Railroads, Under Appropriate Circumstances, to Substitute
Motor for Rail Movement of Local Less-than-Carload
Freight, and to Employ for this Purpose Motor Carriers
Owned by Them, Subject to Conditions Designed to
Prevent Undue Restraint of Competition, has been
Evolved by the Commission after Careful Consideration
Over a Period of Years, and is in Accord with the Provisions of the Act and the Transportation Policy
Declared Therein by Congress in that it Improves
Service and Promotes Economy and Efficiency of OperaFion, to the Public Advantage.

Applying the statutory guides referred to above, the Commission has over a period of years evolved a policy of

^{*}Similarly, this Court has held that the determination of the precise scope of other standards established in the Interstate Commerce Act, such as those of discrimination and preference, and the extent of the term transportation, is a matter primarily for the informed administrative judgment of the Commission. United States v. Chicago Heights Trucking Co., 310 U. S. 344, 352-53 (1940); L. T. Burringer v. U. S., 319 U. S. 1, 7-8 (1943); Swift Co. v. U. S., 316 U. S. 216, 230-31 (1942).

permitting a railroad, either directly or through its motor carrier subsidiary, to substitute motor vehicle carriage for rail carriage in the transportation of less-than carload freight to, from and between local way-stations on the line of the railroad, under appropriate circumstances and subject to certain specified conditions. This policy was found by the Commission to be in accordance with the declared transportation policy of Congress and to be warranted by "public convenience and necessity," because it resulted in improved service to the shipper and in increased economy and efficiency in the railroad's operations, and therefore was in furtherance of the Congressional policy to "proeconomical and efficient service and foster sound economic conditions in transportation and among the several carriers / all to the end of developing. coordinating and preserving a national transportation system by . . . highway and rail as well as by other : means" (see pp. 24-25 above).

1. The Commission's Early Recognition of the Proctical Advantages of Railroad-Controlled Substituted Serv-z iee, in the Resultant Operating Economies and Expedited Service, and Also of the Need to Protect Independent Motor Carriers Against General Over-the-Road Competition from Railroad-Controlled Motor Carriers.

Even prior to the enactment of the Motor Carrier Act of 1935, the Commission began to recognize the practical advantages of motor vehicle service by the railroads as a substitute for peddler-car way-freight operations by rail. In its comprehensive report in 1932 on the subject of Coordination of Motor Transportation, 182 I. C. C. 263, the Commission said (page 336):

"(a) Substitution of Trucks for way-trains and terminal switching—It is generally recognized that peddler or way-freight operations, as to many points, consume much more time than do trucking movements.

and that they are costly because of the number of transfers required and the light loading of cars. In many instances the roundabout character of railroad lines adds to the difficulty. With increased highway competition, these drawbacks have become more and more serious. For several years therefore, a number of railroads-have been substituted truck for rail movements of less-than-carload traffic from designated transfer points, including some points specifically set up for the purpose of concentrating freight by rail for truck delivery to outlying stations. In the reverse direction the trucks collect freight for concentration at such transfer points. The distances covered are commonly 15 to 20 miles in either direction from the concentrating point. Regular rail rates apply and store-door service is not furnished, but frequently the substitution of truck for rail movement is not shown in the tariff. The time of way-freight trains, which commonly carry a crew of five or six men, is thereby considerably reduced or the length of runs increased. deliveries are frequently made one to two days earlier; a more flexible service is made available, and the number of lightly loaded cars is reduced. By taking care of traffic requiring expedited movement, it is further possible in some cases to reduce train service on unimportant lines from a daily basis to a 2-day basis, and in other cases, by eliminating less-than-carload; movements, through trains have been able to take over the carload movement of way trains, eliminating the latter. The requirements of carload traffic and the divergence of highways from the routes of rail lines render it impossible to abandon all local freighttrain service." (Emphasis supplied.).

Soon after the enactment of the Motor Carrier Act, the Commission had occasion to consider the question of the desirability of such substituted service, in the light of the declared policy and provisions of the Motor Carrier Act. In Pennsylvania Truck Lines, Inc.—Control—Barker, 1 M. C. C. 101 (1936), the Commission was called upon to determine whether or not one motor carrier should be permitted to acquire control of another, where it appeared from the applications that the ultimate control of both would rest in a railroad and that the operations of the motor carriers would be used at least partially in coordination with and supplemental to railroad operations. In permitting the acquisition, the Commission said (pp. 105-11):

"It is represented that the acquisition and operation of the properties of the partnership by the new Company under control of the vendee, as proposed, will promote the public interest and be to public advantage by permitting the establishment of a coordinated truck-and-rail service properly synchronized under a single management. This dual form of transportation is expected to furnish a more expeditious and economical service.

The proof is convincing that over some of the routes in question the railroad can 'use service by motor vehicle to public advantage in its operations. The motor vehicle can undoubtedly be used as a very valuable advailiary or adjunct to railroad service, particularly less-than-carload service, and the many opportunities for such use here have been pointed out of record and are clear. Such coordination of rail and motor-vehicle operations should be encouraged. The result will be a new form of service which should prove of much public advantage: Nor do I we believe that the creation of this new form of service will 'unduly restrain competition.' On the contrary, it should have the opposite effect." (Emphasis supplied.)

The Commission thus found that the use by a railroad of motor vehicle operations in a manner auxiliary to and supplemental of the railroad's operations, as in the case of the substituted service proposed, was in furtherance of the policy of the Act and should be encouraged. At. the same time, however, and in the same case, the Commission gave consideration to the possible effect on independent motor carriers of permitting railroads to offer a general motor carrier service identical with that offered by such independent motor carriers. On this point the Commission concluded that it would not be in furtherance of the policy of the Act to permit a railroad to offer motor carrier service beyond a type of service which would merely be auxiliary to and supplemental of the railroad's own operations, and therefore that the motor carrier subsidiary of the railroad should not be accorded authorization to engage in a general over-the-road service of the type performed by independent motor carriers. This view the Commission expressed in the following conclusion, in the Barker case (p. 112):

"We are unable to find, therefore, that the employment by the railroad of the properties and rights of the partnership to provide over-highway truck service as proposed herein in competition with rail and motor carriers generally, including the railroad, will promote the public interest by enabling the railroad to use service by motor vehicle to public advantage in its operations and will not unduly restrain competition"."

2. The Commission's Development of its Policy of Permitting, Upon a Proper Showing, Railroad-Controlled Substituted Service, Subject to Conditions Designed to Protect Independent Motor Carriers Against General Over-the-Road Competition from Railroad-Controlled Motor Carriers.

Following out the principles which it thus laid down in the Barker case, the Commission, when it was

first confronted with an application for a certificate to permit the use of motor vehicles in substitution for rail movement of less-than-carload freight in way-freight trains, adopted the following course: (a) it granted the cortificate upon a showing, first, that the substituted service in question would serve a useful public purpose, as for example, by improving service to the shipper and increasing the economy and efficiency of the operation. and second, that the service in question could not be satisfactorily furnished under existing operating cer; tificates of other motor carriers; and (b) it attached conditions designed to insure that the proposed motor service would be used only as auxiliary to and supplemental of the railroad's operations, and not in general competition with over-the-road transportation by rail and motor carriers.

This appears from the Commission's first decision in a case of that character. In Kansas City S. Transport Co., Inc., Com. Car. Application, 10 M. C. C. 221 (1938), the Commission, in passing upon the application of a wholly owned motor carrier subsidiary of a railroad for a certificate permitting it to operate in substituted service for the railroad, described the proposed service as follows (page 226):

"Applicant proposes to conduct common-carrier operations by motor vehicle in the transportation of general commodities under a plan which, it alleges, will in all respects provide service is supplementary and auxiliary to and coordinated with the railway's service. The general plan of the coordinated service is to transport less-than-carload traffic by rail between key or break-bulk stations, and distribute it thence by truck to the smaller way stations." (Emphasis supplied.)

(a). Requirement of a Showing that the Proposed Substituted Service Would Be to the Public Advantage.

After reviewing the evidence and finding that the proposed substituted service would result in economies of operation and in improved service to shippers, the Commission concluded in the Kansas City S. Transport Co. case as follows (pages 234-235):

- "Applicant has referred us to a long line of cases decided under part I of the act, in which we held in substance that effecting economies and reduction in cost of transportation and increasing efficiency of transportation service of a particular railroad inure to the benefit of the general public and justify the issuance of a certificate of public convenience and necessity. Applicant cites Texas v. United States, 292 U. S. 522, wherein the court, after stating that it had found in previous cases that the Transportation Act, 1920, set up a new policy 'seeking to insure adequate transportation service,' said:
 - * It is a primary aim of that policy to secure the avoidance of waste. That avoidance, as well as the maintenance of service, is viewed as a direct concern of the public.

Applicant also cites New York Central S. Corp. v. United States, 287 U. S. 12, wherein the court said:

The public interest is served by economy and efficiency in operation the term 'public interest' as thus used is not a concept without ascertainable criteria, but has direct, relation to adequacy of transportation service, to its essential conditions of economy and efficiency, and to appropriate provision and best use of transportation facilities

The railway is now furnishing a less-than-carload, or merchandise, freight service which is expensive and in many respects unsatisfactory and inefficient. Through applicant, if the certificate sought be obtained, it proposes to use motor vehicles in coordination with its rail operations in such a way that a merchandise service can be provided that will be much less expensive and at the same time more expeditious and more. convenient and generally satisfactory to the public That these results can be achieved the record teaves no doubt. Moreover, it is clear that this coordinated rail-motor service will be a new form of service, utilizing both forms of transportation to advantage, and differing from the service given by the railway alone or by competing motor carriers alone. That Congress contemplated such coordination is shown by section 202(a) of the act, which declares it to be the policy of Congress, among other things, to improve the relations between, and coordinate. transportation by and regulation of motor carriers and other carriers.' It is also shown by section 213(a)(1), which permits a rattroad to acquire a motor carrier, provided we find that the acquisition will promote the public interest by enabling the railroad to 'use service by motor vehicle to public ad. vantage in its operations', without undue restraint of competition." (Emphasis supplied)

The Commission thus satisfied itself that the proposed substituted service met the standard previously established by the Commission for determining public convenience and necessity in motor carrier cases in that it would "serve a useful public purpose, responsive to a public demand or need" (p. 234 of 10 M. C. C.).

(b). Requirement of a Showing that the Proposed Substituted Service Could not Be Satisfactorily Provided by Existing Independent Motor Carriers.

Next the Commission turned to the question whether the useful public purpose furthered by substituted service could be "served as well by existing lines or carriers" (p. 234 of 10 M. C. C.). It pointed out that the railroad regarded coordination of independent motor carriers as impractical because it could expect no bona fide coordination or cooperation from them in view of their position as competing over-the-road carriers. The Commission further pointed out that it could not compel service between motor carriers and railroads, and such service would therefore depend on voluntary cooperation. It also observed that no one of the existing motor carriers served all of the stations which the railroad served, and the railroad would therefore have to make arrangements, not with one but with several of the existing motor carriers, each of which would perform a "more or less disjointed part of the service." Finally, it observed that effective coordination would require adjustment of schedules and operating conditions, which would be difficult and would not admit of the desired flexibility, if the service were wholly dependent on voluntary cooperation between the railroad and existing independent competing motor carriers. Commission accordingly concluded that "coordinated service through the voluntary cooperation of all or some of the protesting motor carriers is not here practicable,": and the "'useful public purpose' which the proposed new operation will serve cannot be served as well by existing lines or carriers' "-(p. 236 of 10 M. C.-C.)

In this connection, it is appropriate to recall the Commission's language in the Barker case, quoted above (p. 38), where it spoke of "coordinated truck-and-rail service" as a service "properly synchronized under a single management."

(c). Attachment of Restrictive Conditions Designed to Protect Existing Independent Motor Carriers Against General Over-the Road Competition from Railroad-Controlled Motor Carriers.

The Commission finally determined in the Kansas City S. Transport Co. case that the proposed new coordinated service would not endanger or impair the general operations of the existing motor carriers, contrary to the public interest, if proper restrictive conditions were at-The service of transporting less-than-carload freight to, from and between way-stations on the railroad's line was a service which the railroad was obligated to perform in any event, and which it already was performing in competition with existing motor carriers, by the use of peddler-cars in local freight trains. The proposed substituted service would simply provide the railroad with a new and improved facility for performing this obligatory service, in a manner which would better meet the public need. In this connection the Commission observed (page 238):

"We do not believe that the development of this new form of service will seriously endanger the operations of protestants, but, in any event, the public ought not to be deprived of the benefit of an improved service merely because it may divert some traffic from other carriers. If that principle had been followed, indeed, no motor-carrier service could have been developed." (Emphasis supplied.)

In order to insure that the motor vehicle operations under the certificate sought would be confined to service auxiliary to and supplemental of rail transportation, in accordance with the policy established by the Commission in the Barker case, the Commission, in granting the certificate in the Kansas City case, attached conditions to

the effect that (1) the service to be performed should be limited to service auxiliary to or supplemental of the rail service of the railroads in question, (2) the applicant motor carrier "shall not serve or interchange traffic at any point not a station on the rail line" of the railroad in question, and (3) the applicant motor carrier should not transport shipments other than those which, it received from or delivered to the railroad and which were the subject of a prior or subsequent movement by rail (page 240 of 10 M. C. C.).

The third and last of these restrictive conditions was subsequently, upon reconsideration by the Commission, found to be unduly restrictive and indeed to prevent the : adequate accomplishment of the purposes sought to be attained by the substituted service. In a reopening and reconsideration of the Kansas City S. Transport Co. case, Kansas City S. Transport Co., Inc., Com. Car. Application, 28 M. C. C. 5 (1941), the applicant motor carrier, having had the benefit of operating experience under the conditions imposed in the Commission's previous decision, claimed that the condition requiring a prior or subsequent rail haul for all shipments handled in the substituted service was too restrictive and to a large extent defeated the purpose of the substituted service, in that it prevented the complete discontinuance of the costly and inefficient peddler-car train service for handling less-than-carload freight.

Thus, under its tariffs, the railroad was obligated to haul not only through freight destined to or originating at a local way-station, but also freight originating at one local way-station for movement to another local way-station. For example, in the case of local freight service between points A and E, the substituted motor vehicle service, operating under the requirement of a prior or subsequent rail haul, could take care of less-than-carload freight coming into A by rail and destined to B or C intermediate between A and E, by means of a motor

vehicle movement from A to B or C, or it could take care of freight originating at B or C and destined to a point beyond E, by means of a motor vehicle movement from B or C to E and rail movement beyond. But the condition requiring a prior or subsequent rail haul prevented the handling by substituted motor vehicle service of purely local less-than-carload freight originating at B, for example, and destined to C, both intermediate between A and E, and it was therefore necessary to continue the costly and inefficient operation of peddler cars in way freight trains for handling less-than-carload traffic between such intermediate stations.

Impressed by this practical disadvantage of the condition requiring a prior or subsequent rail haul, the Commission, speaking through Commissioner Eastman, concluded, in the second Kansas City S. Transport Co. case. that instead of that condition there should be substituted a new and different condition which would prevent the use of substituted service for movements of less-than-carload freight from one so-called break-bulk or key point-such as A in the example given above to another break-bulk or key point-such as E-where there was adequate through rail service between such break-bulk or key points, but would not prevent the handling in motor vehicle substituted service of less-than-carload shipments originating at such break-bulk or key points and destined to intermediate points-such as B or C-or shipments originating at one such intermediate point, e. g., B, and destined to another such intermediate point, e. g., C. Thereby the complete elimination of the peddler-car method of handling lessthan-carload freight in way-freight train service, and the substitution, therefor of motor vehicle service, with its resultant increased economy and efficiency of operation and improved service to the shippers, was made possible Commissioner Eastman expressed this conclusion in the following language (p. 10 of 28 M. C. C.):

"Upon further consideration, we are of the opinion that the division gave insufficient weight to the fact that the railroad, as well as the independent motor carriers, has been and is furnishing service between the stations, but that between many of them. the present means of railroad service, the way-freight train, is uneconomical and inefficient. This is the reason for coordinating truck service with the rail service, and, as we have found (and as division 5 also found), public convenience and necessity require the increased economy and efficiency which will result from such substituted use of trucks. By the same reasoning, however, public convenience and necessity require the substitution of trucks for way-freight train service regardless of whether there is a prior or sub-sequent movement by rail. Such substitution is a part of the plan of coordination, and unless it can be accomplished, the full benefits in increased economy and efficiency which the public interest demands cannot be secured." (Emphasis supplied.)

In this second Kansas City S. Transport Co. case, the Commission also considered in some detail and with con-. siderable care the contention made by protesting motor carriers that the useful public purpose sought to be accomplished by the substituted motor vehicle service could be served equally well by existing motor carriers, without adding new operations to the sum total of existing facilities. In support of their contention in this respect, the protesting motor carriers proposed three alternative plans for the utilization of existing carriers. The first of these involved the handling of package freight by the Railway Express Agency on passenger trains. contended that this service could be expanded to include all the less-than-carload, freight which would be handled by the proposed substituted service. It was not shown, however, that the existing service of the Railway Express

Agency would be adequate for this purpose or would result in improved efficiency and economy or other advantages either to the Agency or to the railroad. This alternative was accordingly dismissed by the Commission.

The second alternative suggested by the protesting motor carriers in that case involved resort to a scheme of proportional rates; but such proportional rates were found to be closely analogous to those which the Commission and this Court had previously held to be unlawful (see *United States* v. *Chicago Heights Trucking Co.*, 310 U. S. 344 (1940)). Further consideration of that alternative was therefore precluded, leaving only the third alternative as being worthy of consideration.

The third alternative proposed by the protesting motor carriers required resort to joint rates agreed to between the railroad and the independent motor carrier. Such an arrangement would, of course, depend upon voluntary cooperation between the railroad and the independent motor carrier; and the Commission again reviewed the objections to such procedure which it had listed in its prior opinion in the Kansas City S. Transport Co. case, viz., the necessity of having a series of disjointed arrangements with a number of independent motor carriers in order to serve all points which the railroad is obligated to serve, the difficulty of achieving flexible and practicable schedules and operating arrangements, and the likelihood that the independent motor carriers, which were competitors with the railroad for over-the-road line-haul business as well as for local business, would take unfair advantage of their joint arrangements with the railroad to solicit traffic away from it and to impair its service by giving better attention to their own competing motor service.

From this review of the alternatives suggested by the protesting motor carriers, Commissioner Eastman, for the Commission, concluded as follows (page 21 of 28 M. C. C.):

'Having in mind that, for the reasons above indicated, only the joint-rate plan is available, that

under that plan applicant would find it necessary to divide control over and responsibility for less-than-carload service in the affected area with motor carriers which would continue to afford a competing all-motor service, and that the unit costs of the motor service would be materially higher than under applicant's plan with no assurance of offsetting savings in truck-miles, we find that the useful public purpose which would be served by coordination of rail and truck service could not be served as well by existing motor carriers as under applicant's proposed plan." (Emphasis supplied.)

3. The Policy Thus Developed by the Commission with Respect to Substituted Service is in Accordance with the Provisions of the Act and in Furtherance of the Declared Policy of Congress.

Thus the Commission, after a careful and exhaustive review and analysis in a number of cases of the practical advantages of the substitution of motor for rail movement of less-than-carload freight to, from and between way stations on a rail line, and of the various objections made thereto by protesting parties, has concluded that it is in furtherance of the national transportation policy, as declared by Congress in the Interstate Commerce Act, and is in accord with the statutory standards set up in that Act for the Commission's guidance, to permit such substituted services to be furnished by a motor carrier subsidiary of a railroad, subject, however, to conditions of the kind described above, designed to insure that the substituted service will be used only as auxiliary to and supplemental of rail service, and upon a showing which establishes two factors: first, that the substituted service will serve a useful public purpose, and second, that it is a service which cannot be practicably provided by existing independent motor carriers, under their established operating rights.

With regard to the first of these two factors, the Commission considers that an adequate showing has been made if it is established that the substitution will result in expedited and otherwise improved service to shippers and in increased economy and efficiency of the railroad's operations, as for example, through the elimination of wasteful transfers and the haulage of lightly loaded cars. with resultant reduction in operating costs. That the Commission's position in this respect is fully in accord. with the policy and provisions of the Act is made plain by a consideration of the Congressional declarations of policy set forth above (pp. 24-25), and particularly the declaration that the policy of Congress is "to promote * * economical and efficient service and foster: sound economic conditions in transportation and among the several carriers," The Commission's position is also in accord with the statement of this Court in N. T. Central Securities Co. v. U. S., 287 U. S. 12 (1932), with reference to the policy of the Interstate Commerce Act. to the effect that "the public interest is served by economy and efficiency in operation" (p. 23 of 287 U.S.).

With regard to the second of the two factors required by the Commission, viz., that the proposed substituted service cannot be satisfactorily supplied by existing independent motor carriers, the Commission has indicated in its decisions that a sufficient showing is made by the fact that substituted service if provided by existing independent motor carriers would depend on their voluntary cooperation and would therefore be likely to be lacking in important elements of coordination, with probable impairment rather than improvement of the railroad's service. Its reasoning in this respect is illustrated by the following language from its opinion in Louisiana, A. & I. Ry. Co. Common Carrier Application, 22 M. C. C. 213 (1940), a case in which an application, similiar to that involved in the present case, by a motor carrier subsidiary of a railroad, for permission to engage in substituted service for the railroad, was granted (page 216 of 22 M. C. C.):

"While there are a number of motor carriers operating in the considered territory, the Railway contends that any such plan of coordination through the utilization of their service would be impracticable. Only one of the protestants is shown to operate between Shreveport and Dallas. This carrier operates over the proposed route between Jefferson and Dallas, but it does not serve-nor is it shown that all of the protestants collectively serve-all of the points involved. In order to establish the coordinated service through the cooperation of these motor carriers, it. would be necessary, therefore, for the Railway to make arrangements not with one, but with several, each performing a more or less disjointed part of the entire service, and it would be necessary for them to secure authority to serve rail points which they do not now serve. Moreover, most if not all serve points, and often important points, not served by the Railway. They would find it difficult to adjust their schedules to meet the needs of the coordination with the rail service without disrupting or impairing their service to the off-rail points. * * * Furthermore, we are without jurisdiction to compel coordinated service between carriers by rail and carriers by motor vehicle. could only be accomplished through the medium of through routes and joint rates, and we have no power to require their establishment. It follows that any such plan must be dependent on voluntary cooperation. In view of the close adjustment of schedules and interchange arrangements which good, dependable service requires, as well as the joint use of facilities, we believe the Railway has sound ground for its contention." (Emphasis supplied.)

The Commission's position on this point has been well summarized by it in another case of the same character, Pacific Motor Trucking Co. Common Carrier Application, 21 M. C. C. 761 (1940), as follows (p. 763):

"The points in question are admittedly served by other motor carriers, and profestants on exceptions. contend that public convenience and necessity therefore do not require the proposed operation. While adequate motor-carrier service, as such, is no doubt available; we have somewhat consistently refused to compel rail carriers to make their coordinate efforts dependent on competing motor carriers. It is clear that applicant's proposed service will expedite deliveries of less-than-carload shipments now moving by rail and will in some instances supply pick-up and delivery service not now available. It will also result in an improved service with respect to carload traffic by permitting a better adaption of remaining train schedules to its needs. In addition some economies in operating expenses will be effected. There is no question that the proposed rail-truck coordinated service is in the public interest. We have in several instances granted similar authority to other carriers." (Emphasis supplied.)

Of the many examples of cases in which the Commission has granted permission to motor carrier subsidiaries of railroads to engage in substituted service for the railroads, on a showing of facts similar to those shown in the present case, the following may be cited as typical illustrations, in addition to those cited above:

Indiana R. Extension—Fort Wayne, 21 M. C. C. 73 (1940);

Willett Co. of Indiana, Inc., Extension-Ill., Ind. & Ky., 21 M. C. C. 405;

Rock Island Motor Transit Co. Com. Car. Application, 21 M. C. C. 513 (1940);

Missouri Pac: R. Co. Common Carrier Application, 22 M. C. C. 321 (1940);

Texas & Pacific M. Transport Co. Ext.—Pecos-El Paso, Tex., 33 M. C. C. 38 (1942).

That this established policy of the Commission, with respect to the second factor referred to above, is in accord with the policy and provisions of the Act is clear from a consideration of the provisions declaring a Congressional policy in favor of coordinated rail and motor service (see pp. 24-25 above), and the provisions permitting a railroad to acquire control of a motor carrier if the railroad will thereby be enabled "to use service by motor vehicle to public advantage in its operations" (see pp. 25-26 above). Practical and efficient coordination, the Commission finds, is more likely to result from a substituted service "properly synchronized under a single management" -i. e., operating under the unified control of the carrier which is obligated to render the service, viz., the railroad—than from a joint arrangement between that carrier and its competitors, the existing independent motor . . carriers. As aptly stated in Mr. Justice Rutledge's opinion in the McLean Trucking Co. case (321 U. S. 86):

the Motor Carrier Act is to be administered with an eye to affirmatively improving transportation facilities, not merely to preserving existing arrangements or competitive practices."

(Emphasis supplied.)

Even if the preservation of competition were the sole test—and it is clear from the provisions of the Act, as well as from the language of this Court in the McLean case (see pages 24-25, 30-32 above), that it is not—the policy thus established by the Commission with respect to such substituted service would meet that test, first, because the granting of authority to a railroad-controlled motor carrier for operation of such substituted service improves the quality and efficiency of that portion of the railroad's service and thereby sharpens the competition between that service and the competing services of independent

^{*}Pennsylvania Truck Lines, Inc.—Control—Barker, 1 M. C. C. 101 (1936), at p. 105 (see discussion at pp. 38-39 above).

motor carriers, and, secondly, because the acceptance of the suggested alternative—viz., the operating of this service through voluntary joint-rate arrangements with independent competing motor carriers—would place such competing motor carriers in a position where they could stifle competition by giving operating preference to their, own service, instead of to the service performed by them for and on behalf of the railroad.

The substitution by a railroad, through its wholly-'owned subsidiary or its own direct operations, of motor vehicle for rail movement of less-than-carload freight in local way-freight service, has thus become an established and recognized service, which the Commission after vareful consideration has found to be to the public advantage, in accordance with the policy and purpose of the Interstate Commerce Act, where the requisite showing is made and where the appropriate restrictive conditions are attached. The many considerations and factors relevant toa determination of the proper policy to be pursued with respect to this substituted service have been carefully weighed by the Commission and it has evolved this as its established policy, in the light of its expert knowledge and informed experience, and in the exercise of the broad discretion vested in it to carry out the national transportation policy and to administer the provisions of the Interstate Commerce Act, including the motor carrier provisions here applicable. As this Court said in the McLean Trucking Co. case (321 U. S. at p. 87):

"Resolving these considerations is a complex task which requires extensive facilities, expert judgment and considerable knowledge of the transportation industry. Congress left that task to the Commission to the end that the wisdom and experience of that Commission may be used not only in connection with this form of transportation, but in its coordination of all other forms'."

The fact that this substituted service is of public advantage, in that it provides a new and improved method of performing an essential part of a railroad's over-all transportation service, has been recently recognized by this Court. In Thomson v. United States, 321 U.S. 19 (1944), this Court was confronted with the question of whether or not a railroad might properly apply in its own name for a certificate to operate as a motor vehicle common carrier, under the so-called "grandfather clause" of the Act, for the purpose of engaging in substituted service operations—a question which is not involved in the present case. In holding that the railroad might preperly make such an application, this Court, speaking through Mr. Justice Murphy, characterized the proposed substituted service in the following language (pp. 20-21, 24):

The motor trucks transport less-than-carload lots of freight in complete coordination with the rail service. The railroad instituted this additional method of transportation in order to furnish an improved and more convenient freight service to the public in certain areas of light traffic and in order to curtail care mileage and way-freight service. Motor vehicle transportation, in other words, is merely a new method of carrying on part of its all-rail freight business in which it had been engaged for many years.

"The undisputed facts here disclose that only the railroad holds itself out to the general public to engage in a single complete freight transportation service to and from all points on its lines. As an integral and essential part of this service tendered by the railroad, motor vehicle transportation between certain stations is provided. It is completely synchronized with the rail service and has none of the

elements of an independent service offered on behalf of the motor vehicle operators. Their operations are the operations offered by the railroad as component parts, not as separate or distinct, segments, of its single service. They may be replaced or eliminated at the sole discretion of the railroad." (Emphasis supplied.)

This Court has thus plainly recognized that such substituted service constitutes simply an improved method whereby the railroad performs by motor vehicle a portion of the service which it is obligated to perform, with resultant public advantage, and that such substituted service is a service which the railroad should therefore be permitted to furnish.

In this connection it should be noted that a case exactly like the present case, except that the application was made by the railroad itself instead of by a subsidiary of the railroad, has recently been considered and . decided by the Supreme Court of Iowa. The railroad applied to the Iowa Commission for a certificate of convenience and necessity, under the applicable Iowa statute, to permit the railroad to engage in substituted motor vehicle service operations. The application was resisted by existing motor carriers who had operating rights over the routes in question, on the same grounds which have been urged by the protesting motor carriers in the present case. The Iowa Commission denied the application on the ground that the proposed service could be adequately supplied by the existing motor carriers. was held to be erroneous, by the Iowa Supreme Court, in Thomson v. Iowa State Commerce Commission, 15 N. W. (2nd) 603 (Ia. 1944). In holding that the certificate should have been granted, the Iowa Supreme Court made the following statements:

"In determining whether the Commission or the trial court was right in deciding the effect to be given

the record made by the resisting carriers, it is vitally important to bear in mind that the service the railroad steks authority for is merely auxiliary to, supplemental of, and coordinated with its rail service. Were this an application by an ordinary truck operator to merely duplicate existing motor carrier service, there is little doubt that the denial of the application was adequately supported by the record. It is only when proper supplies is placed upon the specical kind of service and its limitations as such that the erroneous character of the commission's decision becomes apparent (p. 608 of 15 N. W. 2nd).

"The protesting motor carriers furnish no transportation by rail. No one of them is authorized to operate over the entire territory involved. Collectively, they do serve the territory as motor carriers only. But they do not and cannot furnish the type of service here proposed. It could be supplied only through agreements with the railroad. Most, if not all, of the intervenors offered assurances that they would be willing to work with the railroad. The testimony of the railroad's witnesses was that no satisfactory arrangement had been worked out and that none was possible because so many conflicting details in the operations of so many systems made proper coordination impossible (p. 609 of 15 N. W. 2nd).

"The question here before us has been passed upon many times by the Interstate Commerce Commission. • • (p. 609 of 15 N. W. 2nd).

"Of course, the decisions of the Interstate Commerce Commission are not binding precedents upon this court. However, the principles, announced and applied in the foregoing decisions, are so eminently fair, sound, just and reasonable that we have no hesitancy in adopting them as tenets which should be applied in determining whether the commission should have issued a certificate of public convenience and necessity under the facts herein. • • (p. 610 of 15 N. W. 2nd).

"Prior to the construction of such a system of highways, the railroads had no substantial competition from motor carriers. With the development of such highways, however, motor earriers of freight were authorized to operate thereon and developed direct competition with the railroads. The railroads felt the effect of such competition: But they could not stifle it. They could only endeavor to meet it. The public interest is paramount and must prevail over the interests of any particular group. Now this railroad seeks to do that, which the Interstate Commerce Commission has authorized throughout the country, to-wit; improve its service by an auxiliary or supplemental system of coordinated rail and truck service. The public wants such service. It is definitely convenient and reasonably necessary. public is entitled to it (p. 611 of 15 N. W. 2nd).

"Various motor carriers resisted the application. But, under the record here made, they have no more right to deprive the public of the service here proposed than the railroads would have had to deprive the public of the services of motor carriers. "

(p. 611 of 15 N. W. 2nd). (Emphasis supplied.)

The same problem has also been recently considered, and the same conclusion reached, by the Supreme Court of South Dakota. In Application of Megan, 5 N. W. (2d) 729 (S. D., 1942), an application by a railroad for a certificate of public convenience and necessity, under the state statute, to engage in motor carrier operations incidental or auxiliary to railroad service, was granted by

the state commission. In sustaining this action, the Supreme Court of South Dakota said (p. 736 of 5 N. W. (2d)):

"We now hold that the commission, in the exercise of its discretion, may consider whether a proposed service will promote the public interest by strengthening and preserving an indispensable transportation service. That there was a basis in the circumstances established by the evidence for a rational conclusion that purely incidental movement of l. c. l. freight between stations by truck would not only improve the character of applicant's railroad services to the public, but would also add vitality to a failing indispensable transportation service, we are convinced."

II.

THE FACTS.

On the Basis of the Commission's Findings, Supported by Evidence, Its Action in this Case, in Permitting the Railroad, through its Motor Carrier Subsidiary, to Substitute Motor for Rail Movement of Local Less-than-Carload Freight, Subject to the Usual Conditions Attached in such Cases, is in Accord with the Commission's Established Policy for Handling such Cases, Which Policy is in Accord with the Applicable Provisions of the Act and the Declared Policy of Congress.

The present case arises out of an application by a wholly-owned motor carrier subsidiary of a railroad for a certificate permitting the motor carrier to operate for the railroad in substituted service between certain specified points. The applicant motor carrier, known as the Willett Company of Indiana, Inc., is already authorized to operate over routes that parallel almost the entire western regional system of the railroad which owns it, viz., the Pennsylvania, Railroad. By its application in this case

the Willett Company seeks additional authority, so that it may extend its operations to certain portions of the railroad's line lying between Fort Wayne, Indiana, and Mackinaw City, Michigan, thereby rounding out a complete service auxiliary to the western regional system of the railroad. Over certain routes between these points, applicant proposes to engage in motor vehicle service in substitution for the rail movement of less-than-carload freight in local way-freight service. The operations which the Willett Company seeks permission to perform have been correctly described by the Commission as follows (R. 7-8):

"The operations under consideration would be limited to line-haul movements between stations on lines of the railrond. Applicant would render service which is auxiliary to, and supplemental of, the rail service in the transportation of less-than-carload freight. The general plan of this coordinated service is to transport such traffic by rail between key or break-bulk stations and thence by truck to the intermediate or way-stations. Conversely, the applicant would collect freight at the way stations and transport it to the key stations for movement beyond by rail.

"Generally speaking, the termini of each of the connecting routes are relatively large eities or important junction points on the main line of the railroad extending between Fort Wayne and Mackinaw City. Fort Wayne and Grand Rapids have been selected by applicant as key points. Points on the branch lines will be served by motor vehicles operating to and from Grand Rapids. The rail service between Fort Wayne and Grand Rapids is frequent and the volume of tonnage is heavy, whereas the intermediate points receive less tonnage and less frequent service. This is also true at the point north of Grand Rapids with the exception of Cadillac. Traverse City and Petoskey, Michigan."

A. THE EVIDENCE SHOWS AND THE COMMISSION HAS FOUND THAT THE PROPOSED SUBSTITUTED SERVICE WOULD RESULT IN OPERATING ECONOMIES AND EXPEDITED SERVICE AND WOULD THEREFORE SERVE A USEFUL PUBLIC PURPOSE.

At the hearing held before the Joint Board on the Willett Company application, the evidence showed that the proposed operations would result in more efficient loading of freight cars and in the release of needed freight cars for use in through trains, would bring about substantial savings in the expense incurred by the railroad in furnishing the less-than-carload way-freight service which it is obligated to furnish between the points in question, would make possible faster and more frequent service in the delivery of less-than-carload traffic, through the use of motor trucks, and would also result in improvement in the local carload freight train service, through the elimination of the less-than-carload peddler cars in those trains (see pp. 7-8 above). On the basis of this evidence, the Commission found as follows (R. 8):

"The railroad will continue to transport carload freight but will discontinue the operation of 'peddler' cars in local freight trains. The substitution of motor-for-rail service over the considered routes will release freight cars for use in through-freight trains and will result in the elimination of over 61,000 car miles per month, and of approximately 860 car-days per month. For every freight car eliminated the necessity for switching that car in the yards also will be eliminated as well as the attendant expense. The proposed operations will expedite the movement of less-than-carload traffic from 24 to 48 hours and will provide daily; instead of tri-weekly, service at several points."

More than 40 shippers and receivers of freight atpoints on the rail line in question testified in support of the application, and their testimony showed that they would like to have the proposed substituted service made available to them, because it would result in faster and more frequent service and would make it possible for them to continue to deal with the railroad as the single transportation agency responsible for the whole movement which they preferred to do (pp. 9-11 above). This evidence was considered in detail by the Commission and was summarized by it as follows (R. 8-9):

numerous shippers and receivers of freight at points on the rail line expressed a belief that this type of service would be advantageous to them in their business enterprises. These shippers consider the coordinated service essential to their respective businesses and desire that such service be instituted."

Thus on the evidence before it, the Commission has expressly found that the proposed operation would result in improved service to shippers and in increased economy and efficiency in the railroad's operations, and would therefore enable the railroad to use such service "to public advantage in its operation," and would "serve a useful public purpose, responsive to a public demand or need" (see p. 42 above).

B. THE EVIDENCE SHOWS AND THE COMMISSION HAS FOUND THAT THE PROPOSED SUBSTITUTED SERVICE COULD NOT BE SATISFACTORILY SUPPLIED BY EXISTING INDEPENDENT MOTOR CARRIERS.

Having thus found that the first factor required to be shown under its established policy, viz., the serving of a useful public purpose, was satisfactorily established, the Commission turned to the second factor, viz., whether or not the proposed service could be satisfactorily supplied by existing independent motor carriers. The independent competing motor carriers with existing operating rights.

who appeared in opposition to the Willett Company's application, contended that the desired substituted service could be adequately supplied by them under their existing operating rights.

On this point, it was of course in evidence that the application of the Willett Company was being made by a motor carrier subsidiary of the railroad, which was already providing similar substituted service for the railroad over most of the railroad's Western Region (R. 86, 93). It followed logically from this that the proposed service would be operated under a "synchronized management" with the railroad, in better coordination with the railroad's own operations, than would be likely to be the case if the service were supplied by the existing independent motor carriers (R. 124-25, 143). Moreover, there was evidence to show that none of the existing independent motor carriers served all of the points in question on the railroad's line, which the railroad was obliged to serve in. some manner and which it proposed to serve through the substituted service (R. 443, 518, 598-99, 637-38, 647-48, 651-53, 656-58, 662). There was also evidence to the effect that existing operating schedules of independent motor carriers would not fit properly into connecting rail movements, and that substantial rearrangements would be required for proper coordination (B. 637-38, 652-53). Actual experience on the part of the railroad in utilizing an independent motor carrier for this service between some of the points in question had also shown such an arrangement to be unsatisfactory (R. 390-91).

In further answer to the contention of the protestants on this point, the Pennsylvania Railroad; as intervenor in support of the Willett Company's application, offered additional evidence to prove before the Joint Board that it preferred to use its own subsidiary, rather than existing independent motor carriers, for the proposed service, because (1) it already employed the Willett Company in other service of the same type over many other routes, and

it would suit its operations better to have the same motor carrier provide all of this type of service. (2) better coordination of operating schedules and other operating arrangements would result from a unified service provided by one motor carrier subject to the railroad's control. (3) the Willett Company would not be nauling for any other patron than the Pennsylvania Railroad, would not mix its freight with the freight of other patrons, and would not be in general competition with the railroad and therefore would not be inclined to subordinate its service for the railroad to other service rendered by it, as would be the case with independent motor carriers, and (4) the Willett Company, being a subsidiary of the railroad which is obligated to perform the service, would be generally more dependable and more likely to fit in with the railroad's needs (R. 365-366). This offer of proof on behalf of the railroad was excluded from the record by the Joint Board, on the ground that "that issue is not involved in this case" (R. 364, 367)-possibly because the Joint Board regarded the issue in question as already. settled by the established policy of the Commission. Such exclusion did not of course present any ground for objection by the railroad or the applicant, after the Commission had determined the issue in their favor by granting the . application.

The Commission, in disposing of this contention on the part of the protesting motor carriers, followed the precedent which it had established in the Kansas City S. Transport Co. case and subsequent cases (see pp. 43, 47-52 above), and concluded that the desired service could not be satisfactorily furnished by the protestant independent motor carriers under their existing operating rights. In reaching that conclusion, the Commission relied, first, on the fact that those existing operating rights, were not sufficiently broad to permit any one of the protestant carriers to serve all of the points which the railroad was obligated to serve and which it would serve with the sub-

stituted service to be provided by the applicant, and, secondly, upon the fact, fully discussed in the Kansas City S. Transport Co. case (see pp. 43-44, 48 above), that the less than carload freight service in question was a service which the railroad was obligated to render and which could therefore be better and more efficiently rendered by a coordinated service synchronized under the railroad's own management than it could by a service which depended on the voluntary cooperation of independent competing motor carriers (see pp. 47-53 above). On this point, the Commission found as follows (R. 10-11):

· "While several motor carriers operate over portions of the routes involved and in some cases perform similar station-to-station service for the Pere Marquette Railroad, it must be borne in mind that the railroad has been and is transporting the traffic in question between stations, and is under an obligation to continue to do so. Applicant's service will be of a different character from that performed by motor carriers generally. It will be limited to the handling of merchandise traffic to and from points on the lines of the railroad in substitution for train service. To utilize the facilities of protestant motor carriers, the railroad would be required to make arrangements with several of them, each performing a more or less disjointed part of the service. The railroad through its subsidiary, merely seeks the substitution of a more efficient for a less efficient means of service. (Einphasis supplied.)

In concluding, the Commission referred to a previous decision by it regarding the Willett Company of Indiana, in which it had granted authority to that Company to operate along other routes of the Pennsylvania Railroad, for the purpose of making possible substituted service of a similar character; Willett Co. of Indiana, Inc. Extension—Ill., Ind. & Ky., 21 M. C. C. 405 (1.40). In its

opinion in the present case, the Commission summarized its decision in the earlier Willett Company case as follows (R. 11):

"In the Willett Co. Case, division 5 concluded that the coordinated rail-truck service differs from the service given by the railroad alone or by competing motor carriers alone. It is a new form of service utilizing both rail and motor carrier transportation to advantage and in such a way as to render a merchandise service which, is much less expensive and at the same time more expeditious and more convenient and generally satisfactory to the public served. Applicant has been performing such service in conjunction with the railroad over its other routes since prior to October 15, 1935. It is clearly shown that many benefits are derived from such coordinated service."

The Commission then finally concluded (R, 11):

"The Motor carrier service proposed by applicant, operated in close coordination with the rail. road's service, will effectuate a reduction in cost and will result in an increase in efficiency in the transportation over the routes herein considered, which will inure to the benefit of the general public. Furthermore, it does not appear that the restricted service would be directly competitive or unduly prejudicial to the operations of any other motor carrier. We are not impressed by protestants' contentions and are of the opinion that the proposed coordinated service will serve a useful public purpose and that such useful public purpose can not be served as well by existing motor carriers. Applicant is able financially and otherwise to conduct the described operations." (Emphasis supplied.)

The Commission accordingly granted the authority sought, subject, however, to the usual conditions imposed by it upon such grant of authority, designed to limit the service to that which is auxiliary to and supplemental of rail service, as established in its decision in the second Kanas City S. Transport Co. case and subsequent cases (see pp. 45-49 above).

C. THE COMMISSION'S ACTION IN THIS CASE IS IN ACCORD WITH THE POLICY ESTABLISHED BY THE COMMISSION FOR HANDLING CASES OF THIS CHARACTER, WHICH POLICY IS IN ACCORD WITH THE APPLICABLE PROVISIONS OF THE ACT AND THE DECLARED POLICY OF CONGRESS.

Thus the facts of the present case, as demonstrated by the evidence before the Commission, bring it squarely within the policy evolved by the Commission, for cases of this character, after careful consideration over a number of years. The evidence shows beyond question, and the Commission has found, that the proposed operation would result in improved service to shippers and in increased operating economy and efficiency. The evidence also shows clearly, and the Commission has found, that the proposed service could not be satisfactorily furnished by existing independent motor carriers. The case accordingly falls squarely within the principles established by the Commission in the Barker and Kansas City S. Transport Co. and subsequent cases.

Protestants' attack on the Commission's order permitting the desired substituted service, and the decision of the court below setting aside the Commission's order, represent nothing more than a frontal attack on the Commission's whole policy with respect to substituted service cases. Protestants and the court below are challenging the Commission's exercise of the administrative discretion vested in it by Congress, under the Interstate Commerce Act, to carry out the provisions and declared policy of the Act. Neither the protestants nor the court

below have pointed to, or can point to, any provision in the Act which is contravened by this established policy of the Commission or by its decision in the present case. On the contrary, the Commission's policy in this respect, and its decision here, fall squarely within the scope of the provisions of the Act and of the national transportation policy therein declared by Congress. Protestants and the court below in effect dispute the wisdom of the policy thus carefully developed by the Commission, in the light of its expert knowledge and informed experience. On such an issue, there can be no doubt that Congress intended, as this Court has held, that the informed and expert administrative judgment of the Commission must prevail.

III.

ERROR OF PROTESTANTS AND THE COURT BELOW.

The Position of the Protesting Independent Motor Carriers in this Case, and the Decision of the Court Below Sustaining that Position, are Contrary to the Applicable Provisions of the Act and Would Result in the Frustration Rather than the Fulfillment of the Congressional Policy Declared Therein.

The attack made by the protesting independent motor carriers before the Joint Board and Commission, and as plaintiffs in the court below, upon the application here in issue and upon the Commission's action in this case amounts to an attack upon the policy which the Commission has carefully evolved and adopted for handling substituted service cases of this character, as set forth above (pp. 39-49). The substance of protestants' contention was that, as a matter of law, the Commission is required in cases of this character to refuse to grant authority for the substituted service sought unless it is shown that existing

rail and motor facilities are physically inadequate, and are, in fact, so bad that shippers and receivers of freight are dissatisfied and are demanding a change. This position of the protestants appears from the exceptions which they filed to the proposed report made by the Commission's Examiner (R. 734-803). It is also made manifest by the type of evidence which protestants introduced before the Joint Board, in opposition to the Willett Company's application. This evidence of protestants, as well as the cross-examination directed by their counsel to the witnesses supporting the application, was designed to show that at least some shippers were not dissatified with existing rail and motor service and facilities (R. 255, 270, 286-87, 304-5, 466, 484, 491, 506, 525, 538, 545, 550, 556, 572, 575, 589).

That this was the position of protestants and was adopted by the court below is plain, not only from the fact that that court enjoined the Commission's order granting the Willett Company's application, but also from the language of the court's so-called "Special Findings of Fact." In those "Special Findings" the court said (R. 45):

No proof was made or offered by the applicant or presented in evidence that present highway common motor carrier transportation service by duly certificated carriers operating in interstate or foreign commerce and serving the points proposed to be served by the applicant was or would be inadequate to serve the public need therefor. Proof was presented before the Commission by the plaintiff and other protestants concerning the adequacy of existing common motor carrier service. There was no substantial evidence to prove public convenience and necessity." (Emphasis supplied.)

The court thus obviously adopted the protestants's position that the applicant in a case of this character

must show actual physical inadequacy in the common carrier service of existing motor carriers, before its application for substituted service can be granted.

This position is plainly erroneous, in that it completely misses the issue presented by an application for substituted service, such as is involved in the instant case. Here the question is, not whether there should merely be more motor carrier service of the kind already supplied by existing motor carriers, but whether a railroad, in offering and supplying its own railroad service, shall be permitted to make use of motor carrier facilities either directly or through its own motor carrier subsidiary, with resulting increase in the efficiency and economy of its railroad operations. The contentions of the protestants completely disregard the latter question, and this position of theirs is demonstrably erroneous in two respects.

In the first place, they assume that the Commission is required by law, in substituted service cases of this kind, to be guided only by a determination of whether existing motor carrier service is physically inadequate, thereby completely ignoring the test of whether or not the efficiency and economy of the transportation system would be improved and promoted by permitting the kind of substituted service sought. As a matter of fact, the provisions and policy of the Act make it plain that in such a case the Commission is not merely authorized, but is required, to apply the latter test and is not to be guided by a test of the kind urged by protestants.

Secondly, the position of the protestants assumes that in cases of this character the Commission, in determining whether a railroad may use motor vehicles in the performance of a railroad service, must confine its attention to the question of whether or not there is existing adequate motor carrier service in the same territory, and that the Commission is without statutory warrant to permit a railroad to employ motor vehicles of its own, or of its motor carrier subsidiary, for the better performance,

of the service which the railroad is obliged to render, unless the Commission finds that there are no existing in dependent motor carriers with facilities sufficient to carry the freight in question.

A. ERROR OF ASSUMING THAT A TEST OF PHYSICAL IN-ADEQUACY OF EXISTING FACILITIES MUST BE APPLIED AND REGARDED AS CONTROLLING.

Protestants, in contending, as they do, that authority to engage in substituted service of this character may not be granted unless it is found that existing facilities are so physically inadequate as to cause dissatisfaction among shippers, ignore completely the basic policy of the Act, as expressly declared by Congress. As pointed out above (pp. 34-35), the Commission, in applying the statutory standard of "public convenience and necessity," must be guided by the declared policy of the Act and must construe that standard in the light of and in a manner consistent with that policy. The declared policy of Congress is to "promote * * * economical and efficient service * * * to the end of 'developing, coordinating and preserving a national transportation system."

Thus, the keynote of this policy is "promotion," and "development"—in other words, improvement and betterment—of transportation. It is not a policy simply of keeping the transportation system from breaking down, or preventing it from becoming so bad that shippers become dissatisfied and clamor for change. On the contrary, it is expressly declared to be a policy of taking all possible steps to improve and better and develop, the transportation system, to increase and enhance the economy and efficiency of transportation service. This policy is not a static one; it is a growing and progressive policy, looking towards constant advancement in the art of transportation and in the service which that art makes available to the users of transportation. Protestants' contention in

this respect is completely answered by the language of Mr. Justice Rutledge in the McLean Trucking Co. case, already quoted (p. 53 above), to the effect that "the Motor Carrier Act is to be administered with an eye to affirmatively improving transportation facilities, not merely to preserving existing arrangements." (Emphasis supplied.) As the Commission aptly put the matter in the first Kansas City S. Transport Co. case, (see p. 44 above), "the public ought not to be deprived of the benefit of an improved service merely because it may divert some traffic from other carriers. If that principle has been followed, indeed, no motor carrier service could have been developed."

Plainly, protestants' contention—and the decision of the court below upholding that contention—would result in a transporte in policy that would freeze "existing arrangements" and methods of transportation, and would keep them frezen until the public outcry for a change became irresistible. Such a policy would obviously constitute a complete frustration of the expressed Congressional preference for progressive advancement and improvement in the transportation system.

B. ERROR OF ASSUMING THAT A RAILROAD MAY NOT BE PERMITTED TO USE ITS OWN OR ITS SUBSIDIARY'S MOTOR VEHICLES FOR THE BETTER PERFORMANCE OF ITS RAILBOAD SERVICE UNLESS FACILITIES OF EXISTING INDEPENDENT MOTOR CARRIER SERVICE ARE SHOWN TO BE INADEQUATE.

Implicit in the protestants' position is the assumption that a railroad must not be permitted to use either its own motor vehicles or the motor vehicles of its motor carrier subsidiary for the performance of a railroad service, so long as there are existing independent motor carriers with enough trucks and other physical facilities for hauling the/freight in question.

This assumption likewise ignores the declared policy

of Congress that the transportation system shall be developed, improved and bettered, and not merely kept in a static condition. Protestants disregard the fact that the proposed substituted service merely constitutes a facility for performing in a new and improved manner a service which is already being rendered by the railroad and which the railroad is obligated by law to continue to render insome manner, viz., the transportation of less-than-carload freight to and from local stations on its line. All that is sought is an improvement in the method of furnishing this service, which must somehow be furnished in any event, Protestants would compel the railroad to choose between either continuing to furnish this service by means of the wasteful and inefficient "peddler" car method or furnishing it in a manner which would not provide the greatest possibility of efficiency and well-coordinated operation, and would probably result in impairment rather than improvement of the railroad's service (see pp. 7, 53-54 above). To place upon the railroad the compulsion of such a choice would thwart rather than further the declared Congressional policy of advancing and bettering the transportation art and of encouraging the coordinated use of various types of facilities for that purpose.

This assumption by protestants likewise ignores the express provisions of the Act. At the time when, prior to the enactment of the Motor Carrier Act of 1935, Congress was considering what provisions should be included in that Act, representatives of the motor carrier industry strongly urged that railroads should be excluded entirely from the field of motor vehicle operations and should not be permitted to acquire control of or operate any motor carrier at all. This suggestion was definitely rejected by Congress when it enacted the Act. In Section 213 (a) of the Act—originally included in the Motor Carrier Act but subsequently merged with other consolidation and acquisition provisions into the present Section 5 of the Interstate Commerce Act (see pp. 25.26 above)—

Congress expressly provided for the acquisition and control by a railroad of a motor carrier, upon a finding by the Commission that such acquisition and control "will promote the public interest by enabling [the railroad] to use service by motor vehicle to public advantage in its operations." The reasons for the inclusion of that provision in the Act were explained by Commissioner Eastman, in the Senate Hearings in 1938 on the bill proposing amendments to the Act, as follows (Hearings on S. 3606, 75th Congress, 3d Session, March, 1938, p. 23):

The reason for that proviso was that at the time when this act was under consideration by your committee, there was a feeling on the part of many that railroads, for example, ought not be permitted to acquire motor carriers at all. It was pointed out, in opposition to that view, that there were many cases where railroads could use motor vehicles to great advantage in their operations, in substitution for rail service, as many of them are now doing. · Many railroad men, for example, feel that the operation of way trains has become obsolete: that the motor vehicle can handle such traffic between small stations much more economically and conveniently than can be done by a way train; and the motor vehicles are being used in that way by many railroads. The same is true of many terminal operations. The motor vehicle is a much more flexible unit than a locomotive switching cars, and it can be used to great advantage and with great economy in many railroad operations.

"For that reason, something of a compromise was reached between those two opposing views, and it was provided that a railroad could acquire a motor carrier if it could make special proof that the transaction was not only consistent with the public interest but would promote the public interest and would

also promote the public interest in a special way, namely, by enabling such carrier other than a motor carrier to use service by motor vehicle to public advantage in its operations. And a further finding was required, that the acquisition will not unduly restrain competition." (Emphasis supplied.)

Thus, it is clear from this language of the Act and from Commissioner Eastman's explanation of it, that Congress intended that a railroad should be permitted to acquire and control a motor carrier subsidiary and use the motor vehicles of that subsidiary in conjunction with its own operations, where the Commission finds that such use of motor vehicles by a railroad would be "to public advantage." By way of illustration of what might constitute such "public advantage," from a railroad's use of a motor carrier in the railroad's operations, Commissioner Eastman cited the very type of operation involved in the present case, viz., the use of motor vehicles for handling traffic, otherwise handled in way-freight trains, between small stations on the railroad's line. In this testimony, and the testimony quoted elsewhere above (pp. 27-28). Commissioner Eastman made it clear that his own view was that it would be definitely to the public advantage to permit a railroad to substitute motor vehicle. for rail handling in such operations.

Thus, the standard which Congress has set up, as

^{*}The same view was well expressed in the report made by Leo I. Flynn, Attorney-Examiner of the Interstate Commerce Commission, to the Commission, on the subject of "Coordination of Motor Transportation," in 1932 (published as Senate Doc. No. 43, 72nd Congress, 1st Session), in the following language (p. 101):

[&]quot;If rail carriers are to participate fully in modern transportation, it will be necessary for them to operate, either directly or indirectly, motor vehicles. While coordination may be to some extent effected between rail carriers and independently operated motor-vehicle lines it will fall far short of what can be accomplished if the rail and the motor-vehicle operations are under one management. The use of the established railroad organization, personnel, stations, telegraph, telephone, and other existing rail facilities in connection with motor-vehicle operations, would not only make for efficiency, of service but would obviate duplications and waste." (Emphasis supplied.)

the Commission's guide for determining whether a railroad shall be permitted to acquire and use a motor carrier subsidiary in conjunction with its own railroad operations, is that which might be expected in the light of the declared general policy of the Act-viz., not a static standard, requiring the freezing of existing arrangements. but rather the standard of improvement and betterment, the standard of "public advantage," with respect to the improved efficiency of the railroad's operations. present case the Commission had before it the specific type of operation which was before Congress when it was considering whether or not to permit a railroad to acquire and use motor carriers for the purpose of supplementing and improving the railroad's own operations, Having that specific type of operation before it Congress saw fit to provide expressly that a railroad could acquire and use a motor carrier in conjunction with its own operations, where the Commission found it would be of public advantage to do so. The Commission has so found in the present case, and its findings, and conclusion based thereon, clearly come within the scope of the intent and purpose of Congress, as manifested in these provisions. The contrary position of protestants, and of the court below, would plainly lead to a defeat rather than a fulfillment of the Congressional purpose.

Protestants, in contending that the application in this case must be denied upless it is found that the existing motor and rail facilities are physically inadequate to handle the freight in question, are guilty of a fundamental confusion. They have confused cases like the present one, which involve simply an attempt by a railroad to improve its own existing service through the substitution of motor for rail handling of certain freight and the use of its motor carrier subsidiary for that purpose, with the quite different type of case in which an independent motor carrier seeks to inaugurate a new service, as, for example, a general over-the-road service.

in addition to and in competition with other existing motor carriers who provide the same type of services.

In the latter type of case the Commission, in order to prevent destructive and wasteful competition by the introduction of a wholly new service, in duplication of and in addition to existing services where those existing services are adequate to take care of the business offered, has established, as one of the tests which must be met, the requirement that the existing services must be shown to be inadequate. On the other hand, in the present type of case a quite different situation is presented. Here the purpose is, not to add a wholly new service in duplication of existing services, but is merely to provide a new and improved method of performing one of the already existing services, viz., the railroad service to way-stations on the railroad's line. Since the railroad will be obliged to continue to offer this service in any event, whether or not the substituted service application is granted, and since the only question therefore is whether it shall be required to perform that service by rail movement or shall be permitted to use motor vehicles in the performance thereof, it follows that the test of adequacy of existing services is not appropriate because there is no proposal to add to the existing services, but only a proposal to change the method of performing one of them.

Despite this fact, the Commission, out of excessive caution and as a part of its established policy for handling these substituted service cases, insists on an additional showing with respect to whether or not the proposed service could be satisfactorily furnished by existing motor carriers. However, it quite properly does not require a showing of the physical inadequacy of existing motor carrier facilities to carry the freight in question, as a condition of permitting the substitution of facilities, but, on the contrary, regards its requirement in this respect as being satisfied, where the application is made by a motor carrier subsidiary of a railroad, by the fact that an arrangement with the existing independent motor carriers to provide substituted motor service would not be likely

to result in as efficient and economical coordination and synchronization of the rail and motor portions of the service, and might result in impairment rather than improvement of the railroad's over-all service (see pp. 43, 47-54 above). In this respect the Commission's policy again looks to the advancement and improvement of the transportation art as the ultimate test to be applied, and is therefore fully in accord with the policy and purpose of the Act.

C. PROTESTANTS' POSITION WOULD LEAD TO THE STIFLING RATHER THAN THE ENCOURAGING OF HEALTHY COMPETITION.

There is no doubt that Congress, in furtherance of its policy of advancing and improving the art of transportation, intended that competition within the transportation field should be encouraged, within reasonable limits and subject to the Commission's power to prevent and eliminate wasteful and destructive competition. That policy is made manifest, with respect to the specific type of situation here involved, by the provision at the end of the language quoted above from what was formerly Section 213 (a) and is now embraced within Section 5 of the Act, to the effect that the Commission may permit a railroad to acquire and use a motor carrier where the railroad's use of the motor carrier in the railroad's operations will not only be to the public advantage but will not "unduly festrain competition."

It is clear in the present type of situation that it is the Commission's established policy, as applied in its order in the instant case, which is on the side of preserving and encouraging competition, while the position of the protestants would result in the stifling and less ning of competition. As already pointed out (pp. 53-54 above), the granting of permission to a railroad to improve its handling of less-than-carload freight traffic

through the substitution of motor for rail movement thereof and the use of its motor carrier subsidiary for that purpose, results in a betterment of the railroad's service from the standpoint of the public and therefore in a sharpening of the competition between the railroad's service, on the one hand, and the competing services of independent motor carriers, on the other. Protestants' contention, however, would require the railroad to make arrangements with independent motor carriers which would not only not provide the maximum possibility of increased efficiency and economy in the railroad's service, hut, more importantly, would place such independent motor carriers in a position where, as competitors with the railroad's over-all transportation service, they could stifle and suppress the competitive impact of the railroad's service by giving operating preference to their own service rather than to that portion of the railroad's service which was assigned to them for performance.

Thus it is clear that the policy which the Commission has, after careful consideration, developed and established for handling applications of the character here involved, and which it has applied in this case, is fully in accord with and in furtherance of the provisions of the Act and the declared policy of Congress as expressed therein, in . that it is designed for the promotion of improved transportation service and the advancement and betterment of the transportation art, and at the same time for a sounder and more healthy competition between the different agencies of transportation. On the other hand, the position of the protestants, and the decision of the court below sustaining that position, would result in the hindering and impeding of the development of the transportation system and the improvement of the transportation art, and in the stifling or deadening of healthy competition in the transportation field, and would therefore frustrate rather than carry out the policy and provisions of the Act.

CONCLUSION.

For the reasons stated above, it is submitted that the judgment of the court below, enjoining and setting aside the Commission's order of September 25, 1943, should be reversed, and the complaint should be dismissed.

Respectfully submitted,

HARRY E. YOCKEY,

108 E. Washington Street,
Indianapolis 4, Indiana.

Counsel for Appellant, The Willett
Company of Indiana, Inc.

JOHN DICKINSON,
H. Z. MAXWELL,
JOHN B. PRIZER,
1740 Broad Street Station Bldg,
Philadelphia 4, Pennsylvania.
Counsel for Appellant, The Pennsylvania Railroad Company.

Sterling G. McNees, State St. Building, Harrisburg, Pa.

R. Aubrey Bogley, Hibbs Building, Washington, D. C.

Of Counsel.

March 1, 1945.

APPENDIX.

EXCERPTS FROM THE INTERSTATE COMMERCE ACT.

A. Excerpts from Motor Carrier Act of August 1, 1935, c. 498, 49 Stat. 543, 551, 555-56.

"Sec. 202. (a) It is hereby declared to be the policy of Congress to regulate transportation by motor carriers in such manner as to recognize and preserve the inherent advantages of, and foster sound economic conditions in, such transportation and among such carriers in the public interest; promote adequate, economical, and efficient service by motor carriers, and reasonable charges therefor, without unjust discriminations, undue preferences or advantages, and unfair or destructive competitive practices; improve the relations between, and coordinate transportation by and regulation of, motor carriers and other carriers; develop and preserve a highway transportation system properly adapted to the needs of the commerce of the United States and of the national defense; and cooperate with the several States and the duly authorized officials thereof; and with any organization of motor carriers in the administration and enforcement of this part.

"(b) The provisions of this part apply to the transportation of passengers or property by motor carriers engaged in interstate or foreign commerce and to the precurement of and the provision of facilities for such transportation, and the regulation of such transportation, and of the procurement thereof, and the provision of facilities therefor, is hereby vested in the Interstate Commerce Commission."

"Sec. 206. (a) No common carrier by motor vehicle subject to the provisions of this part shall engage in any interstate or foreign operation on any public highway, or within any reservation under the exclusive juris-

diction of the United States, unless there is in force with respect to such carrier a certificate of public convenience and necessity issued by the Commission authorizing such operations: Provided, however, That, subject to section 210, if any such carrier or predecessor in interest was in bona fide operation as a common carrier by motor vehicle on June 1, 1935, over the route or routes or within the territory for which application is made and has so operated since that time, or if engaged in furnishing seasonal service only, was in bona fide operation on June 1, 1935. during the season ordinarily covered by its operation, except in either instance as to interruptions of service over which the applicant or its predecessor in interest had no control, the Commission shall issue such certificate without requiring further proof that public convenience. and necessity will be served by such operation, and without further proceedings, if application for such certificate is, made to the Commission as provided in paragraph (b) of this section and within one hundred and twenty days after this section shall take effect, and if such carrier was registered on June 1, 1935, under any code of fair competition requiring registration, the fact of registration shall be evidence of bona fide operation to be considered in connection with the issuance of such certificate. Otherwise the application for such certificate shall be decided in accordance with the procedure provided for in section 207(a) of this part and such certificate shall be issued or denied accordingly. Pending the determination of any such application the continuance of such operation shall be lawful: And provided further. That this paragraph shall not be so construed as to require any such carrier lawfully engaged in operation solely within any State to obtain from the Commission a certificate authorizing the transportation by such carrier of passengers or property in interstate or foreign commerce between places within such State if there be a board in such State having authority to grant or approve such

certificates and if such carrier has obtained such certificate from such board. Such transportation shall, however, be otherwise subject to the jurisdiction of the Commission under this part.

"(b) Application for certificates shall be made in writing to the Commission, be verified under oath, and shall be in such form and contain such information and be accompanied by proof of service upon such interested parties as the Commission shall, by regulation, require. Any person, not included within the provisions of paragraph (a) of this section, who or which is engaged in transportation in interstate or foreign commerce as a common carrier by motor vehicle when this section takes effect may continue such operation for a period of one hundred and twenty days thereafter without a certificate and, if application for such certificate is made to the Commission within such period, the carrier may, under such regulations as the Commission shall prescribe, continue such operation until otherwise ordered by the Commission. "

"Sec. 207. (a) Subject to section 210, a certificate shall be issued to any qualified applicant therefor, authorizing the whole or any part of the operations covered by the application, if it is found that the applicant is fit, willing, and able properly to perform the service proposed and to conform to the provisions of this part and the requirements, rules, and regulations of the Commission thereunder, and that the proposed service, to the extent to be authorized by the certificate, is or will be required by the present or future public convenience and necessity; otherwise such application shall be denied: Provided, however. That no such certificate shall be issued to any common carrier of passengers by motor vehicle for operations over other than a regular route or routes, and between fixed termini, except as such carriers may be authorized to engage in special or charter operations.

- "(b) No certificate issued under this part shall con'r fer any proprietary or property rights in the use of the public highways."
- "Sec. 213. (a) It shall be lawful, under the conditions specified below, but under no other conditions, for two or more motor carriers which are not also carriers by railroad to consolidate or merge, their properties, or any part thereof, into one corporation for the ownership, management, and/or operation of the properties theretofore in separate ownership; or for any such motor carrier or two or more such carriers jointly, to purchase, lease, or contract to operate the properties, or any part thereof, of another such carrier; or for any such motor carrier or two or more such carriers jointly, to acquire control of another such carrier through purchase of its stock; or for a person which is not a motor carrier or a carrier by railroad, or express, or water to acquire control of two or more motor carriers through ownership of their stock; or for any such person which has control of one or more motor carriers to acquire control of another such carrier through ownership of its stock; or for a carrier by railroad, express, or water to consolidate, or merge with, or acquire control of, any motor carrier or to purchase, lease. or contract to operate its properties, or any part ther of.
- "(1) Whenever a consolidation, merger, purchase, lease, operating contract, or acquisition of control is proposed under this section, the carrier or carriers or the person seeking authority therefor shall present an application to the Commission, and thereupon the Commission shall notify the Governor of each State in which any part of the properties or operations of the carriers involved in the proposed transaction is situated, and also such carriers and the applicant or applicants, and other parties known to have a substantial interest in the proceeding of the time and place for a public hearing.—If after such hearing the Commission finds that the transaction pro-

posed will be consistent with the public interest and that the conditions of this section have been or will be fulfilled, it may enter an order approving and authorizing such consolidation, merger, purchase, lease, operating contract, or acquisition of control, upon such terms and conditions as it shall find to be just and reasonable and with such modifications as it may prescribe: Provided, however, That if a carrier other than a motor carrier is an applicant, or any person which is contfolled by such a carrier other than a motor carrier, or affiliated therewith within the meaning of section . 5(8) of part I, the Commission shall not enter such an order unless it finds that the transaction proposed will promote the public interest by enabling such carrier other than a motor carrier to use service by motor vehicle to public advantage in its, operations and will not unduly restrain competition.

- "(2) Whenever a person which is not a motor carrier is authorized, by an order entered under subparagraph (1) of this section, to acquire control of any such carrier or of two or more such carriers, such person thereafter shall, to the extent provided by the Commission, for the purposes of section 204 (a) (1), and section 220 (a) and (b), relating to accounts, records, and reports, and to the inspection of facilities and records, including the penalties applicable in the case of violations thereof, be subject to the provisions of this part,"
- B. Excerpts from Transportation Act of September 18, 1940, c. 722, 54 Stat. 899, 902-3, 920, 924.
- "Section 1. The Act entitled 'An Act to regulate commerce,' approved February 4, 1887, as amended (U. S. C., 1934 edition, title 49, secs. 1-27; Supp. IV, title 49; secs. 3, 6, 11, 15, 18, 21, 22, 25, 26, 301-327), is amended by inserting before part I the following:

'Short Title.

'This Act may be cited as the Interstate Commerce Act.

'National Transportation Policy.

'It is hereby declared to be the national transportation policy of the Congress to provide for fair and impartial regulation of all modes of transportation subject to the provisions of this Act, so administered as to recognize and preserve the inherent advantages of each; to promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation and among the several carriers; to encourage the establishment and maintenance of reasonable charges for transportation services, without unjust discriminations, undue preference or advantages, or unfair or destructive competitive practices; to cooperate with the several States and the duly authorized officials thereof; and to encourage fair wages and equitable working conditions; -all to the end of developing, coordinating, and preserving a national transportation system by water, highway, and rail, as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense. All of the provisions of this Act shall be administered and enforced with a view to carrying out the above declaration of policy."

Sec. 7. Section 5 of the Interstate Commerce Act, as amended, is amended to read as follows:

^{&#}x27;Sec. 5. (1) . . .

^{&#}x27;(2)(a) It shall be lawful, with the approval and authorization of the Commission, as provided in subdivision (b)—

^{&#}x27;(i)/for two or more carriers to consolidate or merge their properties or franchises, or any part thereof, into one corporation for the ownership, management.

and operation of the properties theretofore in separate ownership; or for any carrier, or two or more carriers jointly, to purchase, lease, or contract to operate the properties, or any part thereof, of another; or for any carrier, or two or more earriers jointly, to acquire control of another through ownership of its stock or otherwise; or for a person which is not a carrier to acquire control of two or more carriers through ownership of their stock or otherwise; or for a person which is not a carrier and which has control of one or more carriers to acquire control of another carrier through ownership of its stock or otherwise; or

- '(ii) for a carrier by railroad to acquire trackage rights over, or joint ownership in or joint use of, any railroad line or lines owned or operated by any other such carrier, and terminals coincidental thereto.
- '(b) Whenever a transaction is proposed under subparagraph (a), the carrier or carriers or person seeking authority therefor shall present an application to the Commission, and thereupon the Commission shall notify the Governor of each State in which any part of the properties of the carriers involved in the proposed transaction is situated, and also such carriers and the applicant or applicants (and, in case carriers by motor vehicle are involved, the persons specified in section 205 (e)), and shall afford reasonable opportunity for interested parties to be heard. If the Commission shall consider it necessary in order to determine whether the findings specified below may properly be, made, it shall set said application for public hearing, and a public hearing shall be held in all cases where carriers by railroad are involved. If the Commission finds that, subject to such terms and conditions and such modifications as it shall find to be just and reasonable, the proposed transaction is within the scope of subparagraph (a) and will be consistent with the

public interest, it shall enter an order approving and authorizing such transaction, upon the terms and conditions, and with the modifications, so found to be just and reasonable: Provided, That if a carrier by railroad subject to this part, or any person which is controlled by such a carrier, or affiliated therewith within the meaning of paragraph (6), is an applicant in the case of any such proposed transaction involving a motor carrier, the Commission shall not enter such an order unless it finds that the transaction proposed will be consistent with the pubic interest and will enable such carrier to use service by motor vehicle to public advantage in its operations and will not unduly restrain competition'."

"Sec. 17. (a) Section 202 of the Interstate Commerce Act, as amended (which relates to the scope of the application of part II), is amended-

(1) by striking out the heading thereof, 'DECLARATION of Policy and Delegation of Jurisdiction', and inserting in lieu thereof a new heading as follows: 'Application or Provisions': and

(2) by repealing subsection (a) of such section, by striking out '(b)' and inserting in lieu thereof '(a)', and by striking out '(e)' and inserting in lieu thereof '(b)'."

"Sec. 21. (a)

"(e) Section 213 of such Act, as amended (which relates to consolidations, mergers, and acquisitions of control in case of motor carriers), is hereby repealed."

IN THE

Supreme Court of the United States

Остовек Текм, 1944.

No. 507.

INTERSTATE COMMERCE COMMISSION. THE WILL-ETT COMPANY OF INDIANA, INC., AND THE PENN-SYLVANIA RAILROAD COMPANY, APPELLANTS,

HARRY A. PARKER, DOING BUSINESS AS PARKER MOTOR FREIGHT, REGULAR COMMON CARRIERS CONFERENCE OF THE AMERICAN TRUCKING ASSOCIATIONS, INC., ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES. FOR THE SOUTHERN DISTRICT OF INDIANA.

REPLY BRIEF OF APPELLANTS. THE WILLETT COMPANY OF INDIANA, INC., AND THE PENNSYLVANIA RAILROAD COMPANY.

HARRY E. YOCKEY!

· 108 L. WASHINGTON ST. INDIANAPOLIS 4, IND.

Counsel for Appellant, Tie Willett Company of

Intiana . Inc. JOHN DICKINSON.

H. Z. MAXWELL.

JOHN: B. PRIZER.

1740 BROAD STREET

STATION. BUILDING. . PHILADEL WILL PAS

> Courses Appellant. The. Pennsylvania Railway

Company.

ENLING G. MCNEES MALE STREET BUILDING. HARRISHERO, PA

AUBREY BOGLEY.

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Of Townsel .

LANE & SCOTT, PRS., PHILADELPHIA.

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Supreme Court of the United States

OCTOBER TERM, 1944.

No. 507.

INTERSTATE COMMERCE COMMISSION, THE WILLETT COMPANY OF INDIANA, INC., AND THE PENNSYLVANIA RAILROAD COMPANY, Appellants,

HARRY A. PARKER, DOING BUSINESS AS PARKER MOTOR FREIGHT, REGULAR COMMON CARRIERS CONFERENCE OF THE AMERICAN TRUCKING ASSOCIATION, INC., ET AL.

APPEAL PROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF INDIANA.

REPLY BRIEF OF APPELLANTS, THE WILLETT COMPANY OF INDIANA, INC., AND THE PENNSYLVANIA RAILROAD COMPANY.

I STATEMENT OF PRINCIPAL CONTENTIONS AD-VANCED BY APPELLEE-PROTESTANTS.

The briefs which the protesting motor carriers, appellees in this Court, have filed in opposition to the briefs

of the Interstate Commerce Commission, the Willett Company and The Pennsylvania Railroad Company, contain so many misleading and erroneous statements and contentions that it is impossible to answer all of them. However, an analysis of their various claims shows that they can be reduced to the following principal contentions:

- 1. The policy which the Interstate Commerce Commission has established for handling cases where a railroad or its wholly-owned motor carrier subsidiary applies for permission to operate in substituted service for the railroad, and which the Commission has followed in this case, is alleged to resolve itself into permitting a railroad to use, either directly or through its motor carrier subsidiary, motor vehicles in substituted service operations regardless of the facilities of existing independent motor carriers. (See brief of appellee Parker, pp. 47-65). This is claimed by the appellee-protestants to be an erroneous and unlawful policy for the following alleged reasons:
 - a. This policy ignores the intent of Congress expressed in the Interstate Commerce Act, to prevent an oversupply of transportation facilities (see brief of appellee Parker, pp. 37-39, 41);
 - b. The statutory standard of "public convenience and necessity," by which the Commission must be guided in these cases, should be construed as requiring a showing that the facilities of existing independent motor carriers are inadequate to perform the service, because (1) it is so construed by the Commission in railroad extension cases and in other types of motor carrier cases, as, for example, where an independent motor carrier seeks to engage in new over-the-road operations (brief of appellee Parker, pp. 65-75), and (2) such construction is supported by various state court decisions

under allegedly comparable state statutes (brief of appellee Parker, pp. 79-84);

- c. In adopting and following the policy which it applies to these cases, the Commission has confused "public interest" with "public convenience and necessity," and this is erroneous because the two terms are not the same under the statute, and what is found to be in the public interest may not satisfy the requirements of public convenience and necessity (brief of appellee Parker, pp. 75-78; brief of appellee Norwalk Truck Line Co., pp. 15-16);
- 2. The policy of the Commission with respect to these cases is said to ignore the alleged intent of Congress that the railroads should be excluded from the motor carrier field, or admitted to it only under rare and limited circumstances, the reason claimed for this supposed intent on the part of Congress being the asserted danger that the railroads would invade the motor carrier field for the purpose of destroying competition from independent motor carriers (brief of appellee Parker, pp. 41-45, 96-97; brief of appellee Norwalk, pp. 15-16).
- 3. It is further contended that the application in this case is defective in that it should have been made by the Railroad, rather than by the Willett Company, under the decision of this Court in the *Thomson* case (brief of appellee Norwalk Truck Line Co., pp. 13-15), and in that it seeks a common carrier certificate rather than a contract carrier permit (brief of appellee Parker, p. 91; brief of appellee Norwalk, pp. 11/13).
- 4. Finally, the appellee-protestants urge that, under the recent decision of this Court in the so-called Seatrain case, the Commission has the power to compel the coordination of operations and the establishment of joint rates between rail and motor carriers, and that therefore the alleged reasoning of the Com-

mission, in allowing a railroad to use its own motor carrier subsidiary for the performance of substituted service because otherwise it would have to depend on the voluntary cooperation of the existing independent motor carriers, is erroneous (brief of appellee Norwalk, pp. 20-22).

II. STATEMENT OF PRINCIPAL POINTS WHICH ANSWER THE CONTENTIONS OF APPELLEE PROTESTANTS.

Before considering specifically and separately each of these and other claims which the appellee protestants advance, it should be noted that there are four principal points which constitute a sufficient answer to the protestants principal contentions and which, although they have been fully set forth in the brief previously filed in this Court in behalf of the Willett Company and The Pennsylvania Railroad Company, may be briefly restated here as follows:

1 Congress has in the Interstate Commerce Act declared a policy of fostering coordination of motor and rail transportation for the purpose of improving service to the public and promoting economy and efficiency of operations, and has vested in the Interstate Commerce Commission a broad administrative discretion to carry out and apply this policy. The policy so declared must be read into the provisions of the Act and supplies a canon of interpretation for those provisions, including the standard of "public convenience and necessity" by which the Commust be guided in passing upon the establishment of motor routes. The application of this standard is left by the Act to the Commission, with its specialized transportation knowledge and experience in both the railroad and motor carrier fields, and the Commission is peculiarly fitted to determine how the

various forms of transportation may best be coordinated and fitted together. This Court has said many times that the Commission's exercise of its administration discretion in such a situation should not be interfered with by the courts. Two particularly apt expressions to that effect by this Court are to be found in the opinions of Mr. Justice Rutledge in the McLean Trucking Co. case (321 U. S. 67) and of Mr. Justice Jackson in the Inland Waterways Corp. case (319 U.S. 671), in the passages quoted in the brief heretofore filed in behalf of the Willett Company and The Pennsylvania Railroad Company (pp. 32-33). The principal contentions of the appelleeprotestants are addressed to the administrative discretion of the Commission, and do not establish any departure by the Commission from the statutory standards and limits applicable to cases of this character.

2. The type of motor carrier service for which approval is sought in cases like the present one is fundamentally different from other types of motor carrier service in a most important respect, viz., in . that the service here involved is proposed as, and only as, a service auxiliary to and supplemental of existing rail service, and as merely a new and improved method whereby the railroad may better perform, to public advantage, a service which it is obligated : by law to perform in some manner: This characteristic of the type of service in question is particularly important because it (a) distinguishes this service from the general over-the-road type of motor carrier service, (b) demonstrates that the Commission is not permitting an unnecessary duplication or oversupply of transportation facilities in granting this application since the service is not additional to but is in substitution for an existing service, and (c) disposes of the fears which protestants and other independent

motor carriers profess to have, that they will be driven out of the motor carrier business by the entry of the railroads into the motor carrier field. The Commission has repeatedly recognized the importance of this distinction by making it plain that, while it will permit railroads to substitute motor for rail operations as a new and improved method of performing the service which the railroads are obligated to perform in any eyent, it will limit the railroads to motor vehicle operations which are auxiliary to and supplemental of rail operations and will not permit the railroads to enter the motor carriers field to the extent and for the purpose of engaging generally in over-the-road trucking in competition with independent motor carriers.

3. The Commission's established policy with respect to substituted service cases of this character does not ignore the question of whether the proposed service could be satisfactorily supplied by the existing independent motor carriers, but on the contrary includes a requirement that a showing be made that the service could not be as well or satisfactorily supplied by existing independent motor carriers, as a prerequisite of the Commission's grant of approval.

4. What the Commission is doing in this case, and has done in other cases of this kind, is to carry out one of the paramount purposes of the Interstate Commerce Act—viz., to foster coordination of the various forms of transportation for the purpose of improving service and promoting economy and efficiency of operations—by making possible improvements in the railroads? transportation service, through the coordination of rail and motor operations, in such manner as will redound to the substantial advantage of the shipping public and will result in a saving of transportation costs and an increase of transportation efficiency, and will at the same time preserve rather than restrain healthy competition.

III. DISCUSSION OF SPECIFIC CONTENTIONS OF APPELLEE PROTESTANTS.

The first principal claim of the appellee-protestants is that the Commission has in cases of this sort erred in establishing and applying an alleged policy whereby it permits a railroad or its motor carrier subsidiary to engage in motor vehicle operations in substituted service for the railroad, wholly regardless of the facilities of existing independent motor carriers. The answer to this contention is, first, that it does not fully or correctly state the Commission's policy which the Commission has in fact established and applied in these cases is not erroneous or in violation of the provisions and purpose of the Interstate Commerce Act.

A. Protestants' Contention that the Commission Disregarded the Question of Whether the Proposed Service Could be Satisfactorily Supplied by Existing Independent Motor Carriers is not Correct, Because the Commission Did in Fact Require a Showing that the Service Could not be Satisfactorily so Supplied.

It is wholly erroneous to say that the Commission in these cases disregards the question of whether or not existing independent motor carriers could satisfactorily supply the proposed service. On the contrary, as pointed out in the brief previously filed herein for the Willett Company and The Pennsylvania Railroad Company (p. 43), the Commission, in laying down its policy for cases of this character in the first Kansas City S. Transport Co. case, expressly and at some length discussed and considered the question whether the useful public purpose furthered by substituted service could be "served as well by existing lines or carriers" (emphasis supplied) (p. 234 of 10 M. C. C.). It again reviewed this question at still greater length in its opinion in the second Kansas City S. Prans-

port Co. case (pp. 47-49 of brief of Willett Company and Pennsylvania Railroad Company). As a result of this extensive and careful consideration of the question. the Commission concluded that the question was relevant. and important and that in substituted service cases it should be shown that the proposed substituted service could not be provided as well or satisfactorily by existing independent motor carriers. It also concluded that that requirement would be satisfied in such cases by showing that the substituted service if provided by existing. independent motor carriers would depend on voluntary cooperation between the railroad and a number of such existing independent motor carriers, each with its own separate operating schedules and arrangements, and would therefore be likely to be lacking in important elements of coordination.

In all cases of this character, involving applications by a railroad or its motor carrier subsidiary for permission to engage in substituted service, the Commission has followed the precedent which it thus set for itself in the Kansas City S. Transport Co. cases, and has required that a showing be made that the proposed service could not be as well or satisfactorily supplied by existing independent motor carriers (see pp. 50-52 of brief of Willett Company and Pennsylvania Railroad Company). So also, in the case at bar, the Commission has followed the polic; thus established by it with respect to cases of this character, and has found on the basis of the record before it that the proposed substituted service could not be satisfactorily supplied by existing independent motor carriers (see brief of Willett Company and Pennsylvania Railroad Company, pp. 62-67).

What the appellee-protestants' contention in this respect really amounts to is an attack on the Commission's findings based on the evidence before it. What they are asking this Court to do is to go behind the Commission's

findings in this respect, analyze the record and the evidence before the Commission, and come out with the conclusion that the Commission did not properly evaluate that evidence and that it erred because it did not make findings different from those which it did make: Appelleeprotestants cannot rightly claim that the Commission made no finding on this point, because the Commission's report, after reviewing the facts established by the evidence, expressly states (R. 11) that in its opinion, "the proposed coordinated service will serve a useful public purpose, and that such useful public purpose cannot be served as well by existing motor carriers." (Emphasis The Commission thus expressly found that it would not be satisfactory to use existing independent motor carriers for the furnishing of this service, and the contention of the appellee-protestants in this respect can therefore have significance only as an attack on the factual basis for this finding.

Viewed in that light, their contention is answered, first, by the presumptive weight to be attached to the findings made by the Commission in the discharge of its administrative duties under the Act, and secondly, by the fact that the Commission's finding in this respect was supported by evidence to the effect (a) that none of the existing independent motor carriers served all of the points in question on the railroad's line, (b) that the existing separate schedules of independent motor carriers would not fit properly into connecting rail movements and would necessitate substantial rearrangements, (c) that actual experience on the part of the railroad in utilizing independent motor carriers had proven unsatisfactory, and (d) that, since the service of the applicant would be operated under a "synchronized management" with the railroad, it would be likely to result in better coordination with the railroad's own operation than would be the case if the railroad were forced to depend on the voluntary cooperation of the existing independent motor carriers (see

brief of Willett Company and Pennsylvania Railroad Company, pp. 62-64).

For example, protestant Parker, one of the principal protestants before the Commission and one of the principal appellees in this Court, testified that he served no intermediate points between Grand Rapids and Cadillac, Michigan, which constitutes a substantial portion of the route over which the proposed substituted service would be operated (R. 443; Ex. No. 2, opp. R. 424). A witness representing the Norwalk Truck Line Company, another principal protestant and appellee, testified that the Norwalk Line did not operate over the direct route between Sturgis and Kalamazoo, Michigan, on the main route which the proposed substituted service would cover (R. 518; Ex. No. 2, opp. R. 424). Still another protestant. the Darling Truck Line, indicated through its witness that there were a substantial number of towns, on the routes in question, which it did not serve (R. 598). The representative of still another protestant. Associated Truck Lines, testified, with respect to the operating schedule that would be required in order to coordinate the proposed service properly with the railroad's operations. that "We wouldn't be able to operate under this schedule and at the same time continue to compete with other trucking competition" (R. 637). A witness for the railroad testified that the railroad had been employing the services of an independent motor carrier for performing substituted service between Cadillac and Lake City. Michigan since 1939, and that the service as so performed had not been satisfactory and would be expedited and improved if it were performed by the applicant Willett Company (R. 390). Various shippers testified that the proposed substituted service, with the improvement which it would bring in the railroad's over-all service, would be most desirable, and in some instances a practical necessity, from their standpoint. For instance, a witness representing an important shipper of various kinds of

steel equipment testified, with respect to its shipments, that the shipper would "demand that I get them in there the quickest way I can, and the customers are going to demand that I get them out the quickest way I can," and that therefore his company wanted the expedited service which would be made possible if the Willett Company's application were granted (R. 268).

Additional evidence to show the impracticability of using the existing independent motor carriers for performance of the substituted service was offered on behalf of the Willett Company and The Pennsylvania Railroad Company, but was excluded upon the objection of the protestants (brief of Willett Company and Pennsylvania Railroad Company, pp. 9-10). Protestants should not be heard to claim that a finding of the Commission is invalid for lack of supporting evidence when evidence in support of it was offered but was excluded on their own objection

Thus, the policy which the Commission has in fact established and followed with respect to substituted service cases does not, as protestants claim, ignore the question whether existing independent motor carriers could supply the proposed service as well or satisfactorily, but on the contrary takes cognizance of that question and requires a showing that the service could not be as well or satisfactorily provided by the existing motor carriers.

Even if, however, the Commission's policy did not include the requirement that such a showing be made, it would not necessarily be unlawful or in contravention of the provisions or purpose of the Interstate Commerce Act, for the reasons set forth in the brief filed berein by the Interstate Commerce Commission (pp. 39-42). As there pointed out, it lies within the Commission's administrative discretion, in interpreting and applying the statutory standard of public convenience and necessity, to determine whether such a requirement shall be imposed in cases of this kind. But it is not necessary for this Court to decide in the present case whether the Commission is

obliged by the statute to impose such a requirement, because the Commission has in fact imposed the requirement in this case and other cases of the same kind, and has not granted the permission sought without specifically finding that the requirement was satisfied.

B. The Commission's Established Policy for Handling Substituted Service Cases, Including as it Does the Requirement of a Showing that the Service Could not be as Well or Satisfactorily Supplied by Existing Independent Motor Carriers, is in Accord with the Provisions and Purpose of the Interstate Commerce Act, Including the Provisions Regarding Public Convenience and Necessity, and Does Not, as Protestants Contend, Result in a Wasteful Duplication or Oversupply of Transportation Facilities, Contrary to the Intent of Congress.

As thus actually established and applied, the Commission's policy with respect to these cases is clearly in accord with the provisions and purpose of the Interstate Commerce Act. This has been fully shown in the brief previously filed herein for the Willett Company and The Pennsylvania Railroad Company (pp. 49-59), and there is no need to repeat what has there been said. As was pointed out, the Commission is vested under the Act with broad administrative discretion not only to carry out the declared Congressional purpose of fostering and promoting increased economy and efficiency of transportation, improved service to the public, and coordination of the various forms of transportation, but also to interpret and apply the statutory standard of public convenience and necessity, applicable in cases of this character.

In this connection, however, something should be said about the contention made by appellee-protestants that the Commission has placed upon the phrase "public convenience and necessity" a different construction in cases of this character from that which it has given to the same

phrase in railroad extension cases and in cases of other types of motor carrier applications-such as, for example, the application of an independent motor carrier for permission to engage in general over-the-road trucking over new routes-and that in so doing the Commission has erred as a matter of law. (See pp. 65-75 of brief of appellee Parker.) The claim is made that, in railroad extension cases and in cases of motor carrier applications for permission to engage in new over-the-road trucking operations, the Commission requires a showing of the inadequacy of existing transportation facilities before it will grant the desired permission, but that it does not require such a showing in substituted service cases, that such a showing must be required under the law in all cases where a certificate of public convenience and necessity is sought, because of the Congressional intent to prevent an oversupply of transportation facilities (expressed in numerous passages from Congressional statements and reports quoted by appellee-protestantssee pp. 37-39, 41 of appellee Parker's brief), and that the Commission in any event is not free to place one interpretation upon the phrase "public convenience and necessity" in one type of case and a different one in another type of case. (See p. 71 of brief of appellee Parker.)

There are several answers to this contention. As this Court has expressly recognized, the statutory standard of public convenience and necessity is a broad and lossely defined one, so far as the express provisions of the Act are concerned, and the specific application of that standard to particular types of situations has been left, under the Act, primarily to the administrative discretion of the Commission (see pp. 33-35 of brief of Willett Company and The Pennsylvania Railroad Company). As this Court has expressly stated in I. C. C. v. Railway Labor Association, 315 U. S. 373 (1942), both the phrase "public convenience and necessity" and the phrase "public interest" must be construed in the light of and in accordance

with the purpose and policy of the Act (see p. 35 of brief of Willett Company and The Pennsylvania Railroad Company) and, viewed in that light, the two phrases are not distinguishable. There is nothing in the Act to prevent the Commission from applying these statutory standards in one way in one type of case and in another way in another type of case, so long as the Commission remains within the broad framework of the Congressional policy and purpose as declared in the Act.

Moreover, as already pointed out, the Commission does in fact require in substituted service cases a showing that proposed service of that special character could not be as well or satisfactorily supplied by existing independent motor carriers, and therefore the Commission does not in fact apply in these cases a different construction of the statutory phrase "public convenience and necessity" from that which it applies in railroad extension cases and in cases of general over-the-road motor carrier applications.

No Unnecessary Duplication or Over-supply of Transportation Facilities Results from the Performance of Substituted Service by a Railroad or its Subsidiary.

It must be especially borne in mind that the Commission's approach to these substituted service cases must be considered in the light of the important fact that in such cases the proposal before the Commission does not seek to introduce a wholly new and additional transportation service, in duplication of existing transportation services, but merely seeks to substitute for an already existing rail service a new and improved method of performing that service. The handling of less-than-carload freight traffic to, from and between any stations on its rail line is a service which the railroad is obliged by law to render in any event. There is no question here.

as appellee-protestants contend (pp. 75, 95 of brief of appellee Parker and pp. 28-29 of brief of appellee Norwalk Truck Line), of claiming that any particular traffic belongs exclusively to any one carrier or any one form of transportation. The point is, not that any particular traffic belongs to the railroads, but that the railroad is obliged to render the service when requested by shippers to do so, and this obligation on its part continues regardless of whether most or all of the traffic is offered to it or to competing carriers. Since this obligation continues, the railroad must be ready, able and willing to perform this service, and must actually perform the serviice when requested to do so, and all that is sought in these substituted service cases is the utilization of another type of physical facilities whereby the railroad may continue to perform this existing service in a manner which will improve the service from the standpoint of shippers and will increase its economy and efficiency from the standpoint of the railroad.

This fact constitutes an answer to the contention advanced by appellee-protestants (see pp. 37-41 of brief of appellee Parker), that the Commission's policy with respect to these substituted service cases is inconsistent with the Congressional purpose introduced into the Interstate Commerce Act by the Transportation Act of 1920 and reaffirmed in the Motor Carrier Act of 1935 and the Transportation Act of 1940-to prevent an oversupply. of transportation facilities. Since the enactment of the Transportation Act of 1920, it has of course been the expressed Congressional purpose, as this Court has frequently recognized, that the Interstate Commerce Act should be so administered as to foster sound economic conditions in transportation and develop, coordinate and preserve an adequate national transportation system, and, with that objective in view, to minimize wasteful and unnecessary duplication of transportation facilities. The claim of appellee-protestants is that the Commission, by

permitting a railroad, either directly or through its motor carrier subsidiary, to engage in substituted service when there are independent motor carriers operating in the same territory, is permitting a wasteful and unnecessary duplication of transportation facilities. But this contention ignores the real nature of substituted service and its relation to existing transportation facilities.

·Before the proposed substituted service is inaugurated, there are in existence two kinds of service in the territory in question, viz., rail service, and motor carrier service, the latter being usually provided by a number of separate motor carriers operating independently of each other and of the railroad, and operating in competition with the railroad's service. The proposed substituted service will not introduce a third and additional type of service but will, on the contrary, take the place of the rail service to a certain extent, and will simply constitute a new and improved method whereby the railroad will supply its service. So far from destroying or restraining competition between the railroad's service and the service provided by the independent motor carriers, the proposed substituted service, by improving the railroad's service from the standpoint of the shipper andincreasing the economy and efficiency of operations from the railroad's standpoint, will help to preserve healthy competition between the railroad's service and the service of the existing independent motor carriers. Moreover, it must be remembered that the primary objective of the national transportation policy, as formally declared by Congress, since the Transportation Act of 1920, is the development, coordination and preservation of an adequate national transportation system, through the promotion of efficiency and economy and the fostering of sound economic conditions in transportation. The promotion of economy and efficiency and of improvement of service within a railroad system, for the maintenance of sound conomic conditions within that system and the preservation of that

system as an important part of the national transportation system, is an important step in the attainment of the Congressional objective, and it is plainly within the sound administrative discretion of the Commission to approve proposals directed to that end, in its carrying out of the declared transportation policy of Congress.

Clearly, the Commission, in permitting a railroad to improve its service to the public and increase the economy and efficiency of its operations by the substitution of motor for rail handling of less-than-carload traffic between local way stations on its rail line, is not only not contravening the policy and provisions of the Interstate Commerce Act, but, on the contrary, is actively furthering and carrying out the Congressional policy, within the provisions of the Act, by permitting and encouraging advancement in the transportation art, to the public advantage (see brief of Willett Company and The Pennsylvania Railroad Company previously filed herein, pp. 71-79).

State Court Decisions Do not Support Protestants'. Position but, on the Contrary, are in Accord with the Commission's Policy of Permitting Substituted Service in Cases of this Character.

Before leaving this discussion of the protestants' contention with respect to the proper interpretation and application to be given to the statutory standards by which the Commission is to be guided in these cases, it should be pointed out that the reliance which protestants place upon the decisions of state courts, in support of their contention as to the meaning of the phrase "public convenience and necessity" (see pp. 79-84 of brief of appellee Parker), is unfounded, since none of the state decisions referred to by protestants deals with a case involving substituted service, with the exception only of the decision of the Ohio Supreme Court in New York Central R. Co. v. Public Utility Commission, 123 Ohio St. 370, 175

N. E. 596 (1931). In the Ohio case, the Ohio Supreme-Court had before it a decision of the Ohio Commission in which an application by a railroad to engage in substituted service had been denied. This exercise of administrative discretion by the Ohio Commission was sustained by the Ohio Supreme Court. However, since that times the Ohio Commission has changed its attitude toward substituted service and in a more recent decision has granted permission to a railroad-controlled subsidiary to engage in such substituted service. An appeal from this later decision of the Ohio Commission was taken to the Ohio Supreme Court, and that Court has, within the last few weeks, handed down a decision sustaining the Commission's grant of authority to engage in such substituted service.* A copy of this recent opinion of the Ohio Supreme Court, handed down March 14, 1945, is reproduced as an appendix to thi, brief.

Thus, the only state court decision to which protestants can point as supporting their position with respect to substituted service no longer represents the attitude or the law of that state toward substituted service. In contrast to this lack of support in the state courts for protestants' position, there are, in support of the positions of the Willett Company and The Pennsylvania Railroad Company, not only the recent Ohio decision but also the lowa and South Dakota decisions, cited in the brief previously filed herein (pp. 56-59 of brief of Willett Company and The Pennsylvania Railroad Company), and in addition.

^{*}In this recent decision the Ohio Supreme Court relied in part on a statutory provision which had been effacted by the Ohio legislature subsequent to the earlier decision of the Ohio court, and which provided that a railroad might acquire and enter into working arrangements with a motor carrier. This Ohio statute, upon which the Ohio court partially relied in approving the performance of substituted service by the railroad's motor carrier substidiary, is analogous to the provisions of Section 213 (a) of the Motor Carrier Act (now included in Sec. 5 of the Interstate Commerce Act), permitting acquisition by a railroad of a motor carrier with the Commission's approval (see pp. 25-26 of brief of Willett Company and Pennsylvania Railroad Company).

decisions of the highest courts of Florida, Texas, and Washington: Central Truck Lines v. Railroad Commission, 118 Fla. 526, 160 So. 22 (1935); Webster v. Texas & Pac. Motor Transp. Co., 159 S. W. (2d) 902 (Tex.) (1941); South Bend Stage Line v. Dept. of Public Works, 162 Wash. 46, 297 Pac. 780 (1931). Wherever the state courts have passed on the question of the propriety of substituted service of the kind here proposed, they have decided in its favor. The same is true of the state regulatory commissions, which have generally permitted the establishment of substituted service by railroads or their motor carrier subsidiaries.

C. The Contention of Appellee-Protestants, that Congress Intended to Exclude Railroads from the Motor Carrier Field, as Marked out by the Motor Carrier Act, is Refuted by the Plain Provisions of the Act and Their Legislative History, and by the Decision of this Court in the Thomson Case.

The second principal contention advanced by the appellee-protestants is that the policy which the Commission has established in dealing with substituted service cases, and which it has applied in the present case, is unlawful because it ignores an alleged intent on the part of Congress that the railroads should be entirely excluded from the motor carrier field, at least to the extent that that field is marked out and regulated by the Motor Carrier Act, or admitted to that field only under rare and special circumstances, and that railroads should be discouraged from engaging in motor carrier operations within the scope of the Motor Carrier Act and should be restricted primarily to motor carrier operations subject to Part I of the Interstate Commerce Act, e. g., pick-up-and-

^{*}Permission has been granted to motor carrier subsidiaries of The Pennsylvania Railroad Company to operate for it in substituted service over intrastate routes by the state commissions of New York, Pennsylvania, Ohio, Indiana, and Maryland, and no state commission has refused such permission.

delivery and terminal operations (see pp. 41-46 of brief of appellee Parker, and p. 19 of brief of appellee Norwalk Truck Line Co.). The reason which is advanced for this supposed intent on the part of Congress is that Congress was allegedly afraid that the railroads if allowed to invade the motor carrier field would take advantage of that opportunity in order to destroy competition from independent motor carriers.

The answer to this contention is, first, that the provisions of the Act and the decisions of this Court make it plain that Congress had no such intent to exclude the railroads from the motor carrier field, and second, that the Commission, in the disposition which it has made of applications by railroads or motor carrier subsidiaries of railroads to engage in motor vehicle operations, has as a settled matter of its own policy taken pains to restrict railroad operations in the motor carrier field to operations which are auxiliary to and supplemental of the railroad's own operations and to prevent the railroad from engaging in general over-the-road trucking in competition with independent motor carriers.

1. THE PROVISIONS OF THE MOTOR CARRIER ACT AND THE THOMSON DECISION DEMONSTRATE THAT CONGRESS DID NOT INTEND TO EXCLUDE RAILROADS FROM THE MOTOR CARRIER FIELD, AS MARKED OUT BY THAT ACT.

The clearest demonstration that Congress did not intend to exclude the railroads from the motor carrier field, as defined and marked out by the Motor Carrier Act, is provided by the provisions of the Motor Carrier Act itself. Protestants claim that Congress in enacting the Motor Carrier Act intended thereby to carve out a field, defined by the scope of regulation of that Act, from which the railroads should be excluded except in rare and special instances. But if that were so, what possible significance could be given to the provision in the declaration of policy embodied in Section 202(a), as originally enacted by the

Motor Carrier Act, that the policy of Congress was thereby declared to be to "improve the relations between, and coordinate transportation by and regulation of, motor carriers and other carriers?" (See appendix to brief of the Willett Company and The Pennsylvania Railroad Company, p. 1a.) And what possible significance could be given to the provisions contained in Section 213(a), as originally enacted by the Motor Carrier Act, to the effect that a earrier other than a motor carrier, e. g., a railroad, might be permitted by the Commission to acquire control of a motor. carrier if the Commission found that the transaction proposed would promote the public interest by enabling such other carrier "to use service by motor vehicle to public advantage in its operations"? (See appendix to brief of the Willett Company and The Pennsylvania Railroad Company, p. 5a.)

Plainly, these provisions contemplate that there shall be, within the field marked out by the Motor Carrier Act, coordinated operations involving both rail and metor carriers, and more specifically, that a railroad shall be permitted to enter that field and actually operate motor vehicles, where the Commission finds that the railroad will thereby be enabled to use such motor vehicles in its own operations to public advantage. As pointed out in the brief of the Willett Company and The Pennsylvania Railroad Company previously filed herein (pp. 27-29, 73-75), the legislative history of the Motor Carrier Act shows that it was expressly contemplated, by Commissioner Eastman, both as Commissioner and as Federal Coordinator, and by the Senate and House Committees which considered the legislation, that railroads would wish to acquire motor carriers and engage in motor vehicle operations for the explicit purpose of performing substituted service of the kind involved in this case, and that it would be in the public interest for them to be permitted to do so, under appropriate conditions, and it is clear from that legislative history that the provisions referred to were included

in the Act for the purpose of making it possible for railroads to engage in motor vehicle operations of exactly the kind here involved. There could be no plainer indication that Congress was entirely willing that railroads should be permitted to enter the motor carrier field, as marked out by the Motor Carrier Act, at least to the extent of engaging in such substituted service operations.

For example, Commissioner Eastman, in testifying with respect to these provisions before the House Sub-committee, and specifically with respect to substituted service, said:

"I hope and expect to see the railroads utilize these motor vehicles in their own operations to a much greater extent than they now do. "They are utilizing motor vehicles in their terminal operations and they have used them as a substitute for way freight service, in some cases. My own view is that there will be found many more ways where they can be used to advantage in combination with railroad service and I hope to see the time when the railroads will utilize these opportunities fully." (Emphasis supplied.) (See Brief of Willett Company and Pennsylvania Railroad Company, pp. 27-28.)

And before the Senate/Committee Commissioner Eastman said:

"My own personal opinion is that the railroads are going more and more to find that they can use trucks and busses to advantage in connection with their own service." (Emphasis supplied.) (See Brief of Willett Company and Pennsylvania Railroad Company, p. 28.)

Plainly, these statements by Commissioner Eastman contemplate that the use by railroads of motor vehicles in their own railroad operations, and specifically in sub-

stituted service operations, should not only be permitted but should be allowed to grow and expand to the fullest extent possible.

That Congress did not intend to discourage the entry of the railroads into the motor carrier field, as marked out by the Motor Carrier Act, in appropriate circumstances, as for example, in substituted service operations, is also made plain by the decision of this Court in the Thomson case. This Court specifically held in that case that a railroad might properly obtain permission to engage in motor vehicle operations, and more particularly in substituted service operations, under the provisions of the Motor Carrier Act. (See pp. 55-56 of brief of Willett Company and Pennsylvania Railroad Company.) There, as here, the motor vehicle operations in which the railroad proposed to engage constituted "an integral and essential part of this service tendered by the railroad," and accordingly it was held proper for the railroad to apply for and acquire the operating certificate required by the Motor Carrier Act for engagement in motor vehicle operations.

Moreover, the plain implication of Mr. Justice Murphy's opinion in that case is that, since the proposed substituted service is simply a "new method of carrying on part of fthe railroad's all-rail freight business in which it has been engaged for many years," the railroad . should be permitted to extend such substituted service to any portion of its all-rail less-than-carload service, upon an appropriate showing and subject to appropriate conditions as determined by the Commission: As stated by Mr. Justice Murphy in that case, the proposed substituted service operations "are the operations offered by the railroad as component parts, not as separate or distinet segments, of its single service. They may be replaced or eliminated at the sole discretion of the railroad." (Emphasis supplied.) (See brief of Willett Company and Pennsylvania Railroad Company, pp. 55-56.) It clearly follows, therefore, from these considerations

that Congress had no such intent as the protestants seek to impute to it, i. e., to exclude or discourage railroads from entry into the motor carrier field, as marked out by the Motor Carrier Act.

2. THE GROUND ADVANCED BY THE PROTESTANTS FOR THE CLAIMED EXCLUSION OF RAILROADS FROM THE MOTOR - CARRIER FIELD, VIZ., THE SUPPOSED DANGER TO THE EXISTENCE OF INDEPENDENT MOTOR CARRIERS, IS REMOVED BY THE COMMISSION'S POLICY OF RESTRICTING RAILROAD OPERATIONS IN THAT FIELD SO AS TO GUARD AGAINST ANY SUCH DANGER

The second answer to this claim of protestants for the exclusion of railroads from the motor carrier field is that the supposed danger which protestants attribute to the entry of railroads into the motor carrier field, and which they allege as the reason for the supposed intent of Congress—found above to be non-existent—to exclude the railroads from this field, is completely met by the Commission's established policy for handling applications by railroads or motor carrier subsidiaries of railroads, to engage in motor carrier operations.

The danger which protestants profess to fear as the result of the entry of railroads into the motor carrier field is that the railroads will thereby be placed in a position in which they can engage in general over-the-road trucking in competition with independent motor carriers, and, by ruinously competitive practices, drive the independent motor carriers out of business. To the extent that any such danger may exist or may have existed, it has been fully recognized and taken into consideration by the Commission, and, as a safeguard against it, the Commission has adopted, as its settled policy, what is known as the "Barker doctrine," whereby it will not permit a railroad or a motor carrier subsidiary of a railroad to engage in general over-the-road trucking. This doctrine was established by the Commission in the

so-called "Barker" case in the early days of the Commission's administration of the Motor Carrier Act, and it has been rigidly and consistently adhered to by the Commission since that time. (See brief of Willett Company and Pennsylvania Railroad Company, pp. 37-39.)

In furtherance of this settled policy, the Commission has in all substituted service cases attached to its grant of approval conditions designed to insure that the motor vehicle operations permitted will be limited to the proposed substituted service, and will consist only of operations that are auxiliary to and supplemental of the railroad's own operations. These conditions have been evolved by the Commission after extended consideration in a series of substituted service proceeds. In addition to the general condition that the substituted service must be auxiliary to and supplemental of the railroad's operations. and the condition that it must be restricted to stations on a rail line of the railroad, the Commission in its early development of these conditions attached the condition that the substituted service should be limited to the handling of slipments which received a prior or subsequent rail haul. Later, the Commission became convinced, principally through the influence of Commissioner Eastman, that the condition requiring a prior or subsequent rail haul operated largely to defeat the operating advantages which were expected to be derived from substituted service, because that condition made it necessary for the railroadto continue to operate its peddler-car service for handling local less-than-carload freight to, from and between intermediate stations, and therefore prevented the achievement of the desired operating economies. Accordingly, the Commission evolved, in Commissioner Eastman's opinion in the second Kansas City S. Transport Co. case, its so-called "key-point" doctrine, whereby the requirement of a prior or subsequent rail haul was eliminated and there was substituted in its place the requirement that shipments moving between certain key points

should not be handled in the proposed substituted service because the handling of such shipments would amount to permitting the motor carrier subsidiary of the rail-read to engage in through over-the-road trucking. The development and significance of these conditions have been fully discussed in the brief previously filed herein by the Willett Company and The Pennsylvania Railroad Company (see pp. 44-49).

3. The Restrictive Conditions Attached by the Commission to its Grants of Approval in Substituted Service Cases Are Adapted by the Commission to the Circumstances of Each Case, and Are in the Present Case Adequate to Protect the Independent Motor Carriers.

It is claimed by the protestants that these restrictive conditions are not adequate to protect the independent motor carriers against general over-the-road competition from the railroad's motor carrier subsidiary. (See brief of appellee Norwalk Truck Line Co., pp. 23-26.) But surely, such a claim must be addressed to the administrative discretion of the Commission. The question of what restrictive conditions are necessary to prevent the railroad's motor carrier subsidiary from engaging in general over-the-road trucking in competition with independent motor carriers, and how those conditions actually work out in practice, is one which can be determined only in the light of the expert knowledge and experience of the Commission in handling practical operations in this field. The Commission carefully considers the circumstances of each case, and determines in the light of those circumstances and of its experience in handling these cases just what particular conditions would be best designed to prevent the railroad's motor carrier subsidiary from engaging in general over-the-road trucking. In some cases it employs the key-point doctrine, and in other eases it attaches the condition requiring a prior or subsequent rail haul, according to its best judgment as to what is most appro-

priate under the circumstances of the particular case. The fact of the matter is that the key-point doctrine, of which protestants complain, is more likely to safeguard the independent motor carriers than is the condition requiring a prior or subsequent rail haul. This is because by far the greatest portion of the traffic handled in substituted service actually receives a prior or subsequent rail haul, regardless of whether or not such a condition is attached, and the key-point condition has the added effect of limiting the length of the hauls in substituted service and depriving the motor carrier engaged in substituted service from handling some of the longer hauls that it would otherwise be able to handle. Thus the substitution of the key-point restriction for the prior-or-subsequent-rail-haul restriction. has the effect of substantially retaining the benefit of the latter for the independent motor carriers, since almost all of the traffic involved complies with that condition anyway, and, in addition, of imposing another condition which further limits the substituted service operations by eliminating hauls between the key points.

In the present case, the Commission has expressly found, in view of the special character of the substituted service and the conditions and limitations to which it is made subject, that "It does not appear that the restricted service would be directly competitive or unduly prejudicial to the operations of any other motor carriers" (R. 11). Furthermore, the Commission, for the purpose of insuring that the substituted service operations of the Willett Company shall not exceed the limits of service which is auxiliary to or supplemental of rail service, has expressly retained control of the case, by specifying that its grant of approval shall be subject to "such further specific. conditions as we, in the future, may find it necessary to impose in order to restrict applicant's operations 'to service which is auxiliary to, or supplemental of, rail service" (R. 12). Plainly, the protestants are fully protected by the opportunity which is thus provided them to

complain to and obtain relief from the Commission at any time, if they should find that the actual substituted service operations of the Willett Company exceed the proper bounds of such substituted service and encroach into the field of general over-the-road trucking. So far as the Willett Company and The Pennsylvania Railroad Company are concerned, there is no desire or attempt whatever on their part to engage in any such general over-the-road trucking. The protestants' problem in this respect is obviously one of enforcement, for handling under the Commission's enforcement powers, and is not a problem of legal determination for this Court.

D. The Contention of Appellee-Protestants that the Application in this Case Should Have Been Made by the Railroad Rather than by its Motor Carrier Subsidiary, and the Contention that it Should Have Been in the Form of an Application for a Contract Carrier Permit Rather than for a Common Carrier Certificate, Are Negatived by the Law and the Decisions.

Another contention advanced by appellee-protestants is that, in view of this Court's decision in the Thomson case, and in view of the fact that it is the railroad and not its motor carrier subsidiary which deals with shippers and issues the bills of lading under which shipments will move in the proposed substituted service, the application for the certificate should have been made by the railroad and not by the Willett Company. In conjunction with this argument, it is contended that the Willett Company should have applied for a contract carrier permit, rather than a common carrier certificate, since its operations will be limited to service for the railroad, under a contract with it, and will not be performed for the general public. (See brief of appellee Norwalk Truck Line Co.; pp. 11-14.)

19 THE CONTENTION THAT THE APPLICATION SHOULD HAVE BEEN MADE BY THE RAILROAD RATHER THAN BY ITS MOTOR CARRIER SUBSIDIARY IS UNFOUNDED.

The Thomson case did not decide that an application of the kind here involved may not be made by a motor carrier subsidiary of a railroad. All that was decided in the Thomson case was that it was erroneous for the Commission to refuse to permit a railroad to apply for and obtain a certificate to engage in motor vehicle operations in substituted service. Under the decision in that case, it was left open for either a railroad or its motor carrier subsidiary to make the application. In the instant case the application was made by the motor carrier subsidiary, and the railroad intervened in support of the application, so that both the railroad and the motor carrier subsidiary were before the Commission and are now before the Court. It can make no substantial difference, from the standpoint of administration of the act, whether the application is made by the railroad and joined in or supported by its motor carrier subsidiary, or is made by the subsidiary and is joined in or supported by the railroad. If, for reasons of business management, it is desirable for the railroad to retain the separate business organization and separate facilities of its motor carrier subsidiary, then the logical and sensible procedure, would seem to be for the application to be made by the subsidiary, which owns the trucks and would actually perform the operation, and to be supported by the railroad for which the subsidiary will operate, as was done here.

The advancement of this argument by the protestants can hardly be considered to be in good faith. It can make no possible difference to them whether the application for permission to engage in the proposed service is made by the railroad or by its subsidiary. In the *Thomson* case, the issue as to whether or not the railroad should be per-

mitted to apply for and obtain a certificate was, of course, a vital issue, since the railroad had made the application and was denied the certificate by the Commission solely on the ground that it was not the proper applicant. Here it is not an important issue, or any issue, as to whether the application should have been made by the railroad rather than by its subsidiary, since both parties are before the Commission and the Court. In any event, the question whether the original application should have been in the name of the railroad or its subsidiary is a purely technical one, having no bearing on the ultimate outcome of the proceeding. A holding that the application should have been made by the railroad would not in any respect give the protestants the relief which they seek, and would serve no useful purpose from their standpoint, except perhaps to delay the inauguration of the service.

2. THE CONTENTION THAT THE APPLICATION SHOULD HAVE BEEN IN THE FORM OF AN APPLICATION FOR A COMMON TRACT CARRIER PERMIT RATHER THAN FOR A COMMON CARRIER CERTIFICATE IS UNFOUNDED.

Similarly, the contention that the Willett Company should have applied for a permit as a contract carrier rather than for an operating certificate as a common carrier is open to the charge of not having been made in good faith, because it can be of no possible concern to the appellee-protestants whether the permission to engage in this substituted service is in the form of a contract carrier permit or a common carrier certificate. Applications for permission to engage in substituted service have been in the form of common carrier applications since the decision of the Commission in Substituted Freight Service, Ex Parte No. 129, 232 I. C. C. 683 (1939). There the Commission, in investigating certain problems with respect to the regulation of substituted service, specifically considered the question whether or not an application for

permission to engage in such service should be for a contract carrier permit or for a common carrier certificate. The Commission concluded that, from the standpoint of the public, the transportation service offered was undoubtedly common carrier service available to the general public, and that either the rail carrier or the motor carrier performing the service for the rail carrier would have to have authority to engage in common carriage by motor vehicle. In this connection, the Commission said (pp. 687-88 of 232 I. C. C.):

"There can be no doubt that the interstate transportation service here under consideration is common-carrier service and that either the rail carrier must have authority to engage in common carriage by motor vehicle in its own right, or the motor carriers joining in such service must be authorized to act as such carriers in their individual capacities. In either event, where the substitution service consists of a combination of line-haul movements by rail and motor, it is in legal effect a joint service, no matter by what other name it may be designated. Under the act and our regulations thereunder, it is fundamental that the service covered by published rates, the routes over which it is performed, and the names of the carriers performing the service must be set forth definitely in the governing tariffs for the information of the shipping public, interested carriers, and the regulatory body, in order to insure the effective and fair administration of the act."

The Commission thus held that, since the motor vehicle service in question would be available to the general public for the handling of shipments between the points and over the routes authorized, there would have to be outstanding, in the name of either the railroad or the motor carrier performing service for the railroad, a

certificate permitting common carriage by motor vehicle between the specified points and over the defined routes. so that the service in question would be brought within the scope of regulation of the Motor Carrier Act. The fact that the physical operations performed by the motor carrier engaging in substituted service are performed only for the railroad under contract with it does not alter the basic nature of the over-all service, as a service which is offered to the public generally for the transportation of shipments between the points and over the routes authorized and which is therefore a common carrier service. The important thing, from the standpoint of administration of the Act, is that there shall be an outstanding common carrier certificate covering the service. Whether the certificate is in the name of the railroad. of the motor carrier subsidiary, is not of any practical importance to anxone except the railroad and its subsidiary.

The Commission has thus established a settled practice of requiring that an application for permission to engage in substituted service shall be in the form of a common carrier application. This practice has been settled since its decision in the Substituted Freight Service case in 1939, and therefore is a practice of six years standing. If it should now be held that this practice is erroneous, and that all such applications should have been in the form of contract carrier permits, the result would be to introduce chaos into this particular field of motor carrier operations. The result would also be to weaken

^{*}The principle thus established by the Commission in the Substituted Freight Service case was specifically applied by the Commission to the Willett Company of Indiana, applicant in the present case, in the proceeding in which the Willett Company first applied to the Commission for permission to engage in substituted service: Willett Company of Indiana, Inc., Extension-Iil., Ind., and Ky., 21 M. C. C. 405 (1940). There the Commission, after reviewing briefly the character of the operations proposed, said (p. 407 of 21 M. C. C.): "Such motor vehicle operations are those of a common carrier by motor vehicle, subject to the Motor Carrier Act, 1935. Substituted Freight Service, 232 I. C. C. 683."

and reduce the scope of the Commission's regulatory rights with respect to this field, since the Commission's powers of regulation with respect to common carrier operations are broader and more extensive than those which it has with respect to contract carrier operations. If the Court should agree with protestants on this issue and should hold that the application should have been for a contract carrier permit, then protestants in future cases would be deprived of the opportunity of making the arguments which they have here made regarding the meaning of the phrase "public convenience and necessity", because applications for contract carrier permits are not subject to any requirement as to public convenience and necessity (see Sec. 209 of Interstate Commerce Act, 54 Stat. 919, 49 U. S. C. Sec. 309).

E. The Contention of Appellee-Protestants that, in View of this Court's Decision in the Seatrain case, the Comussion Must be Regarded as Having the Power to Compel Joint Rates and Coordinated Operations between Rail and Motor Carriers, Ignores the Reasoning of the Seatrain Decision and Disregards the Applicable Provisions of the Act.

A novel contention, based on the recent decision of this Court in United States v. Pennsylvania R. R. Co.,

U. S. , 65 S. Ct. 471 (January 29, 1945), the so-called "Seatrain" case, is advanced by appellee Norwalk Truck Line Company in its brief in the present case (pp. 20-22). It is there contended that the Commission is wrong in believing that it has no authority to compel joint rates and coordinated operations between rail and motor carriers. The argument is that the Commission does have that power and that it should exercise that power to compel the railroad to employ the existing motor carriers for the performance of the proposed substituted service.

The argument that the Commission is empowered

by the Interstate Commerce Act to compel joint rates and coordinated operations between rail and motor carriers purports to be based on the reasoning of Mr. Justice Black in holding, in the Seatrain case, that the Commission was correct in concluding that it had authority to compel railroads to interchange their cars with Seatrain, a water carrier. But there is no analogy between the two types of situations, and Mr. Justice Black's reasoning in the Seatrain case has no application to the present In the Seatrain case, the question was whether or not the railroads could be compelled by the Commission to deliver their cars to a water carrier subject to Part III of the Interstate Commerce Act, viz., Seatrain. Mr. Justice Black, speaking for this Court, reasoned that, since the railroads were under a duty, under Section 1(4) of the Act, to establish through routes with water carriers, and were also under a duty, under Section 3(4) of the Act, to afford all reasonable facilities for the interchange of traffic between their lines and connecting lines, including connecting water carriers, and since Section 15(3) vested in the Commission the power to compel the establishment of through routes between rail and water carriers and the terms and conditions thereof, it followed that the Commission, having previously established such through routes with Seatrain, had the power to compel railroads to deliver their cars to Seatrain, a connecting water carrier, for the interchange of traffic. His conclusion was summed up as follows (p. 475 of 65 S. Ct.):

"It was from its power to require through routes that the Commission originally derived its power to require interchange of railroad cars among connecting railroads. Since a rail-water through route with Seatrain cannot function without an interchange of cars, the unquestioned power of the Commission to require establishment of such routes would be wholly fruitless, without the corollary power to abrogate the Association's rule which prohibits the interchange."

Thus, the proper exercise of a power which was specifically vested by the Act in the Commission was found to entail an implied power in the Commission, viz., the power to require interchange of cars.

. No such situation is presented in the instant case. There is no question here of interchange of equipment between connecting carriers. The performance of substituted service for the railroad by independent motor . earriers would require either a contract between the railroad and such motor carriers or the formulation and publication of joint rates by the railroad and the motor carriers; and the Commission has no power to compel either such a contract or such joint rates. Section 216(c) of the Act provides that "common carriers of property by motor vehicle may establish reasonable through routes and joint rates, charges, and classifications with other. such carriers, or with common carriers by railroad," but there is no provision in the Act whereby the Commission is either expressly or by implication empowered to compelsuch joint rates. The Commission has thus correctly observed in these substituted service cases that any arrangement between the railroad and independent motor carriers for this substituted service would necessarily depend on the voluntary cooperation of the motor carriers as well as the railroad, and it has, therefore, not erred in stating this as one of the reasons for concluding that improved service to the public would be more likely to result from an arrangement whereby the substituted service is performed by the railroad itself or its motor carrier subsidiary, "properly synchronized under a single management," than would be the case if it were dependent on the voluntary cooperation of competing independent motor carriers.

IV. CONCLUSION.

It is apparent from all these contentions advanced · by appellee-protestants that they are endeavoring to create the impression that in this case and other cases of like character the Commission's policy with respect to substituted service amounts to an attack upon the interests of independent motor carriers and is designed to injure those interests. Any such impression would be wholly false, and could be obtained only by ignoring what the Commission has said and what it actually does with respect to this type of service. So far from constituting an attack on the interests of independent motor carriers, the policy which the Commission has established and has applied in this and other substituted service cases is designed to safeguard those interests. It has been and is a principal concern of the Commission in these cases to adopt and enforce such restrictive conditions as will insure that the railroads do not overstep the bounds of motor vehicle operations auxiliary to and within the sphere of their own railroad operations. This is plainly apparent from the Commission's application of its "Barker" doctrine in these substituted cases and its insistence on attaching restrictive conditions, of the kind previously discussed, and on retaining control for enforcement of those conditions. (See pp. 39, 44,47 of brief of Willett Company and Pennsylvania Railroad Company, and pp. 24-28 above.)

Protestants, in their attempt to create the impression that the Commission is attacking rather than safeguarding the interests of independent motor carriers in its handling of substituted service cases, refer to two recent decisions of this Court, U. S. v. Carolina Carriers Corp., 315 U. S. 475 (1942), and Eastern-Central Ass'n. v. U. S.; 321 U. S. 194 (1944). But neither of those decisions has any application to the present case. They are cited by protestants for the general proposition that the courts will

reverse a Commission determination for failure properly to apply statutory standards, or for lack of sufficient findings or evidence to support its findings. This general proposition is, of course, not subject to dispute. Apartfrom such support as those cases lend to that general proposition, they have no bearing on any of the issues involved here. In the Carolina Carriers Corp. case, the Commission, in granting to a motor carrier a certificate under the "grandfather" clause, had restricted the carrier's operating rights to certain specific commodities which it had actually hauled prior to the "grandfather" date, and had also imposed certain geographical restrictions. This Court concluded that the Commission had not shown that, in thus excluding the carrier from the handling of commodities which if had not actually handled prior to the "grandfather" date but which were of the same class as those which it had then handled, and in imposing the geographical limitations which it did; it had applied the proper statutory criterion. The Court accordingly sent the case back to the Commission for more specific findings, to enable the Court to determine whether it had applied the proper criterion.

In the Eastern-Central case, the Commission had found that certain volume minimum weights published by motor carriers in connection with their freight rates were unlawful, because the handling costs of the traffic at those weights had not been shown to be less than the costs incurred for handling reasonable truck-load minimum weights. This Court held that it was erroneous for the Commission to consider only the factor of reduction in operating costs in passing upon the lawfulness of the proposed volume weights, and that the Commission should also have taken into account the factor of competition and especially the competitive relations between the proposed motor carrier rates and minimum weights on the one hand, and the comparable rail rates and minimum weights on the other hand. The Court therefore returned

the case to the Commission for a further weighing of the facts, in the light of the standards held by the Court to be properly applicable.

Obviously, no question with respect to the Commission's policy for handling substituted service cases was even remotely involved in either the Carolina Carriers case or the Eastern-Central case, and therefore neither of those cases has any bearing on the issues involved in the present cases. The fact that this Court has in two cases overruled the Commission for the benefit of motor carriers does not mean that it should or will do so in every case involving Commission action with respect to motor vehicle operations. To the extent that the Eastern-Central decision suggests the importance of the maintenance of competitive conditions between rail transportation, on the one hand, and motor transportation, on the other, it supports the Commission's decision rather than the protestants' position, because the approval of the proposed substituted service will make possible the preservation of healthy competition, between the railroad and independent motor carriers, which otherwise would not be possible. (See brief of Willett Company and Pennsylvania Railroad Company, pp. 53-54, 78-79, and see p. 16 above.)

In the Eastern-Central case the Court pointed out that it did not question "the Commission's authority to adopt and apply general policies appropriate to particular classes of cases, so long as they are consistent with the statutory standards which govern its action" (p. 211 of 321 U.S.). In the instant case, the statutory standard which governs the Commission's action is that of public convenience and necessity. As previously shown, this standard, which is not explicitly defined in the Act, must be construed as the Commission has in fact construed it, viz., in the light of other provisions of the Act, and particularly its policy provisions. Construed in the light of those provisions, and in the light of the legislative history of those provisions, especially the legislative

history which deals expressly with the problem of substituted service, the Commission's action in this case is clearly in accord with the statutory standard.

Thus it is plain from the various contentions advanced by the appellee-protestants that the provisions of the Interstate Commerce Act and the Congressional policy declared therein are ranged in opposition to rather than in support of the protestants. The inevitable result of their position would be that progress in the art of transportation would be impeded rather than advanced, and the status quo would be frozen to prevent the development and growth of this new and improved form of transportation service which the public needs and desires, which was favored by Commissioner Eastman and the Congressional Committees at the time of the enactment of the Motor Carrier Act, and which has met with the practically universal support and approval of the state courts and commissions that have had occasion to consider it, as well as of the Interstate Commerce Commission.

What the protestants definitely want is a situation in which they can gradually drive the railroads out of the less-than-carload local way freight business, by compelling them to continue the old costly and inefficient peddler-car method of handling such business. Protestants' position is on the side of the destruction of competition, rather than the maintenance of it.

On the other hand, the maintenance of the Commission's established policy with respect to these substituted service cases, especially as applied in the present case, will result in the fostering of healthy and vigorous competition, between the railroads' service, including substituted service as one of its instrumentalities, on the one hand, and the service of the independent motor carriers, on the other. There can be no doubt that it is the latter



viewpoint which has the support of the policy and provisions of the Interstate Commerce Act.

Respectfully submitted,

HARRY E. YOCKEY,
108 E. Washington Street,
Indianapolis 4, Indiana.
Counsel for Appellant, The Willett
Company of Indiana, Inc.

JOHN DICKINSON,
H. Z. MAXWELL,
JOHN B. PRIZER,
1740 Broad Street Station Bldg.,
Philadelphia 4, Pennsylvania.
Counsel for Appellant, The Pennsylvania Railroad Company.

State St. Building, Harrisburg, Pa.

R. Aubrey Bogley,
Hibbs Building,
Washington, D. C.
Of Counsel.

March 24, 1945.

APPENDIX.

Supreme Court of Ohio.

THE CLEVELAND, COLUMBUS & CINCINNATII HIGHWAY, INC.,
Appellant,

V.

Public Utilities Commission of Ohio, Appellee.

INTERNATIONAL MOTOR FREIGHT Co. ET AL., Appellants,

V.

Public Utilities Commission of Ohio, Appellee.

Decided March 14, 1945.

WEYGANDT, C. J. The first question presented by the appellants for consideration by this court is whether the proposed operation of the Pennsylvania Truck Lines, Inc., is that of a "motor transportation company" or "common carrier by motor vehicle" as defined by Section 614-84 (a), General Code, which reads in part as follows:

"The term 'motor transportation company,' or 'common carrier by motor vehicle,' when used in this chapter, shall include, and shall apply to every corporation, company, or copartnership when engaged, or proposing to engage, in the business of transporting persons or property, or both, or of providing or furnishing such transportation service, for hire, whether directly or by lease or other arrangement, for the public in general, in or by motor propelled vehicles of any kind whatsoever, over any public highway in this state."

The applicant, the Pennsylvania Truck Lines, Inc., has entered into a contract with The Pennsylvania Rail-

road Company which also owns the stock of the former company. This contract is unassignable except with the consent of the railroad company and provides that the trucking company as an independent contractor shall, accept and transport from and to the enumerated stations all so-called less-than-carload quantities of freight offered to it by the railroad company. The motor vehicles emplored in this transportation service are owned by the trucking company and are not to be rented or leased to the railroad company but are to be operated, maintained and insured by the trucking company at its own expense. For this service the railroad company agrees to pay the trucking company a specified sum per month plus an additional amount for mileage traveled. The contract "shall continue in effect subject to termination upon thirty (30) days' written notice from either party to the other; provided, that either party may terminate this agreement at any time immediately upon written notice to the other party by reason of any adverse legislation, order or rule of any public authority; and provided further, that railroad, because of its common carrier obligations, may terminate this agreement at any time immediately upon the giving of written notice to trucker in the event that trucker shall fail to perform in a satisfactory manner any of its obligations under this agreement."

In their briefs counsel cite and discuss at length the decisions of this court in the three case of New York Central Rd. Co. v. Public Utilities Commission, 121 Ohio St., 588, 170 N. E., 574; New York Central Rd. Co. v. Public Utilities Commission, 123 Ohio St., 370, 175 N. E., 596; and Lake Motor Freight Lines, Inc., v. Public Utilities Commission, 126 Ohio St., 419, 185 N. E., 529.

In the second paragraph of the syllabus of the first of the three cited cases this court held that where "a common carrier railroad company owns, controls, operates or manages any motor-propelled vehicle not usually operated on or over rails, used in the business of transportation of persons or property or both as a common carrier for hire. over any public highway in this state, this constitutes such railroad company a motor transportation company." In contrast the instant case involves the certification of a trucking company and not a railroad. It is true that in the cited case a trucking company was doing the hauling, but that company was operating under a contract which lodged complete control of both management and operation in the railroad company alone. In the instant case the contract expressly provides that the trucking company shall be "wholly independent" and that the railroad company shall not "supervise, direct or control the manner of the rendering of any service in connection with any work or other feature covered by this or prior agreements

The second cited case involved the same railroad company as the first. The chief difference between the two cases is that in the first it was held simply that the railroad company could not continue to operate the trucking service without a certificate of convenience and necessity; and in the second case the railroad company itself applied for such a certificate but this was denied on the three grounds that no proper tariffs had been filed by the applicant as required by law and the rules and regulations of the commission, that the evidence did not show public convenience and necessity for the proposed service, and that the evidence did not show the existing motor transportation companies, were not rendering adequate and convenient service.

The third cited case is the one upon which the appellee relies. There, as in the instant case, the applicant was a trucking company that had entered into a contract with the railroad company for motor transportation of less-than-carload quantities of freight from and to the latter's

stations and under the latter's tariffs and bills of lading exclusively. The Public Utilities Commission granted the application, and that order was affirmed by this court by a divided vote.

But it is important to observe that subsequent to the decisions in those cases Section 8746-1, General Code, was

enacted. In part it reads as follows:

"Any railroad company may acquire, own and hold capital stock and securities of corporations organized for or engaged in the businesses authorized in this act and may operate the properties, or any part or parts thereof, of such corporations, and may enter into working arrangements and agreements with such corporations."

Thus it is apparent that this new statute has expressly authorized a railroad company to do the things that have been done by The Pennsylvania Railroad Company, namely, own capital stock of a motor transportation company and enter into a working arrangement and agreement with such corporation; and there is nothing in the statute to indicate an intention on the part of the General Assembly to the effect that under such circumstances the railroad necessarily becomes a motor transportation company or that the contracting motor transportation company thereby loses its character as a common carrier, as contended by the appellants. It, of course, is true that the motor transportation company is hauling for the railroad, but the fact remains that at the same time it is engaged in public transportation also. The freight transported is the property of neither the railroad company nor the motor transportation company but belongs to members of the public by whom it is taken to one of the enumerated stations to be hauled to another.

Incidentally, as stated by the Public Utilities Commission, one of the appellant protestants itself has been operating for some time under a similar certificate approving a similar contract with The Pennsylvania Railroad Company for the having of less-than-carload quantities of freight over a different route in this state.

Furthermore, it is interesting to note that the Pennsylvania Truck Lines, Inc., already has been granted a certificate by the Interstate Commerce Commission authorizing it to render the same service as to interstate freight shipments for the same railroad over the same route for which an intrastate certificate is now asked; and the provisions of the federal statute are not as broad as those of the state act, as is indicated by the following language of Part II, Section 203, paragraph 14 of the Interstate Commerce Act (Title 49, Chapter 8, Section 303, paragraph 14, U. S. Code):

"The term 'common carrier by motor vehicle' means any person which holds itself out to the general public to engage in the transportation by motor vehicle in interstate or foreign commerce of passengers or property or any class or classes thereof for compensation, whether over regular or irregular routes, except transportation by motor vehicle by an express company to the extent that such transportation has heretofore been subject to Chapter 1

According to the record, 86 per cent of the total number of shipments is interstate and 14 per cent intrastate. It would be an anomaly if the trucking company were held to be a common carrier by motor vehicle as to the 86 per cent but not as to the 14 per cent.

The second complaint by the appellants is that the evidence does not show public convenience and necessity for the proposed service. However, a study of the record fails to substantiate this contention. There were eight shippers among the witnesses. It was stated in part that the existing service for the transportation of less-than-carload quantities of freight is inadequate, that the proposed service will shorten the shipping time 24 to 48 hours, and that none of the protesting trucking companies is now serving the same route and stations. In its opinion appears the following comment by the Public Utilities Commission:

"It is shown by the testimony of record that the granting of this application will result in certain operating economies to the rail carrier, will release railroad equipment for other service, will expedite the movement of less-than-carload freight to a substantial degree, and will preserve an existing mode of transportation for those of the public who desire to avail themselves of this facility.

"There is no substantial complaint or showing in the record that existing motor transportation companies serving in the territory involved will in any manner be injured by the granting of this application—restricted as it will be. There is no doubt that the benefits above outlined will result from the proposed service."

The only remaining complaint requiring comment is that arising from the failure of the Public Utilities Commission to comply with the provisions of Section 614-87. General Code, by giving existing carriers a period of not less than 60 days in which to provide the service before the new certificate of convenience and necessity was granted. This court frequently has held that if a different and specialized or limited transportation service is required and proposed, a new certificate authorizing such service may be granted without first affording existing motor transportation companies an opportunity to provide such service. In the fourth paragraph of the syllabus in the case of H. & K. Motor Transportation, Inc., v. Public. Utilities Commission, 135 Ohio St., 145, 19 N. E. (2d). 956, this rule was stated as follows:

"Where the public convenience and necessity demand a specialized type of motor transportation service of a kind and character different from that afforded by motors transportation companies already operating under certificates over the same route, a certificate of public convenience and necessity may issue to a motor transportation company limited to such specialized service without first affording such other motor transportation companies and

opportunity to furnish such specialized and limited service

In view of the facts disclosed by the record in this case the order of the Public Utilities Commission is neither unreasonable nor unlawful and must be affirmed.

Order affirmed:

ZIMMERMAN, BELL, WILLIAMS, TURNER, MATTHIAS and HART, J.J., concur.

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CHARLES ELMORE OROPLEY

IN THE

SUPREME COURT OF UNITED STATES

OCTOBER TERM, 1944

THE INTERSTATE COMMERCE COMMISSION,
THE WILLETT COMPANY OF INDIANA, INC.,
and the Pennsylvania Railboad Company,
Appellants,

VB.

No. 507 508

HARRY A. PABKER, Doing Business as
PARKER MOTOR FREIGHT, REGULAR
COMMON CARRIER CONFERENCE OF THE
AMERICAN TRUCKING ASSOCIATIONS, INC., et al.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF INDIANA

BRIEF FOR APPELLEES, HARRY A. PARKER, d/b/s PARKER MOTOR FREIGHT, REGULAR COMMON CARRIER CONFERENCE OF THE AMERICAN TRUCKING ASSOCIATIONS, INC., CRESTON TRANSFER COMPANY, AND CONSOLIDATED FREIGHT CO.

Krr F. Clardy,
712 Olds Tower,
Lansing, Michigan.
Robt. E. DesRoches,
2379 National Bank Bldg.,
Detroit, Michigan.
Counsel for Appellees.

Howell, Ellis,
520 Illinois Bldg.,
Indianapolis, Indiana.
Of Coursel.

Dated at Lansing, Michigan, March 5th, 1945.

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IN THE

SUPREME COURT

UNITED STATES

OCTOBER TERM, 1944

THE INTERSTATE COMMERCE COMMISSION,
THE WILLETT COMPANY OF INDIANA, INC.,
and the PENNSYLVANIA RAILROAD COMPANY,
Appellants,

No. 507

508

HARRY A. PARKER, Doing Business as
PARKER MOTOR FREIGHT, REGULAR
COMMON CARRIER CONFERENCE OF THE
AMERICAN TRUCKING ASSOCIATIONS, INC., et al.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF INDIANA

BRIEF FOR APPELLEES, HARRY A. PARKER, d/b/a PARKER MOTOR FREIGHT, REGULAR COMMON CARRIER CONFERENCE OF THE AMERICAN TRUCKING ASSOCIATIONS, INC., CRESTON FRANSFER COMPANY, AND CONSOLIDATED FREIGHT CO.

STATEMENT OF THE CASE

(Figures in parentheses refer to pages of printed record unless context clearly indicates otherwise)

This case originated with an application filed with the Interstate Commerce Commission by The Willett Company of Indiana, Inc. The applicant is the wholly owned subsidiary of the American Contract Company which, in turn, is wholly owned by the Pennsylvania Railroad Company. The applicant sought a common motor carrier certificate over some seven separate routes aggregating in excess of 650 miles between Fort Wayne, Indiana and Mackinaw

City, Michigan. These seven separate operations are the subject of seven separate contracts and are to be carried on over highways which roughly parallel the entire lines of the Pennsylvania Railroad in Michigan.

The motor carrier service as proposed will serve only the intermediate points on the seven separate segments. No through service over the several routes would be offered. The service on each of the routes will be conducted without reference to that on any other route. The railroad owner and the applicant say that the freight will, in some instances, move by rail to certain key points where it will be transferred to the motor truck operation. The railroad, however, was unwilling to accept a limitation restricting its subsidiary, the applicant, to transportation of freight having a prior or subsequent rail move. ment. As the proposed order reads, therefore, the applicant will be enabled to and will handle merchandise which has had no such connection with the railroad. Freight will be handled as it is handled by other common motor carriers.

The application was partially heard on February 10th and 11th and the hearings completed on June 1st and 2nd, 1942. A large number of competing motor carriers took part in the proceeding. The two member Joint Board was unable to agree. The matter was withdrawn from their jurisdiction and a report and order proposed by an Examiner. Since this granted all that the applicant sought, the plaintiff in this proceeding and a number of other carriers filed exceptions. The Commission issued an order sustaining the Examiner on September 25, 1943. We then filed a petition for reconsideration which the Commission denied in an order dated February 8, 1944.

Suit to set aside the order of the Commission was instituted on February 21, 1944 before the United States District Court for the Southern District of Indiana, Indianapolis Division. Arguments were heard on April 28, 1944. The Court made its findings of fact and conclusions of law and issued a decree on June 30, 1944 reversing the Commission. This appeal was then taken by the Commission.

sion, the United States of America and the Applicant on August 22, 1944. We are now advised that the Attorney General will not file a brief and will not prosecute the cause. Their's was a separate appeal in Docket No. 508.

STATEMENT OF THE ISSUES

This case will determine whether the Certificate Section of the Motor Carrier Act must be applied equally to all applicants. The statute under attack has been applied in a manner never employed when the applicant is not railroad owned. It has been applied in a fashion that can only be employed when the applicant is rail owned.

The question is here presented as to whether, in a case brought under the Motor Carrier Act, a railroad owned applicant can prove that a new common motor carrier operation is "required by the public convenience and necessity" by: (1) comparing its owner's railroad service with motor carrier service and; (2) having its railroad owner refuse to make use of existing adequate motor carrier service.

The case has been determined on an interpretation of the statute that must always produce a grant to all railowned applicants.

The principal questions are:

- 1. Has the Commission applied an erroneous rule of law.
- 2. Has the Commission failed to take into account facts that should have been considered.
- 3. Has the Commission based the order on criteria that should not have been employed.
 - 4. Does the order contain proper findings.
 - 5. Is the order based upon improper findings.

^{*}Section 207 of Part II Interstate Commerce Act.

7. Can it be rationally inferred from the evidence that the public convenience and necessity required the service.

8. Were the protestants denied due process.

SUMMARY OF ARGUMENT

The controlling issues stem from the meaning given by the Commission to the phrase "required by the public convenience and necessity". It has determined that this statutory language is satisfied by finding that: (1) since the railroad is now furnishing rail service between the points, it has an obligation to continue to do so as a motor carrier; (2) the proposed service is desirable because it is more efficient than rail service; (3) it will be more economical for the railroad and; (4) it is different from ordinary motor carrier service because it is in substitution for rail service and, therefore, existing carriers cannot furnish it as well as the applicant (10-11).

The appel ants contend: (1) that these findings are sufficient; (2) that they are supported by the evidence and; (3) that the Commission is the sole judge as to what will prove that public convenience and necessity requires an operation.

We contend that: (1) the Court cannot be ousted of its jurisdiction — that it has the daty of determining whether the order rests on a sound legal basis; (2) the case was decided before hearing upon an unlawful interpretation of the statute founded on a preconceivel opinion that all joint service between railroads and motor carriers must be performed by rail owned motor carriers; (3) the findings made are not those required by the statute; (4) the order is based on a discriminatory application of the statute — an interpretation that would not have been applied if the applicant had not been rail owned; (4) the Commission has employed improper criteria — the standards employed are not those upon which the order can stand; (6) the order is based on conditions in the rail-

road field instead of those in the motor carrier field contrary to the mandate of Congress to treat each form of transportation separately; (7) the findings are not supported by substantial evidence but instead are contrary to the evidence; (8) the evidence would not support the order even if proper findings had been made; (9) the order is ambiguous and lacks a clear statement of the reasons for the ultimate conclusion and; (10) the protestants were denied a fair hearing.

This is an application under the Motor Carrier Act for a common motor carrier certificate by a railroad owned motor carrier. The railroad is not the applicant and the proceeding is not one for the extension of a railroad. This railroad interest does not change the issues and should not have been given any weight. The case should have been determined on the sole basis of evidence concerning common motor carrier service and conditions. Congress has so decreed. It intended that each form should be regulated without reference to any other form.

The Commission has disregarded these Congressional injunctions in all cases where a railroad or its subsidiary is the applicant. Every such application has been determined on the basis of arguments relating solely to conditions in the railroad field. Uncontradicted evidence relating to conditions in the motor carrier field has been ignored. Regulation of this class of motor carrier applicants has been undertaken on the sole basis of conditions relating to a totally different form of transportation. These errors are apparent on the face of the order itself.

In all cases where the applicant is non-rail owned, the Commission has held that conditions in other fields of transportation are not to be considered. No motor carrier certificate has ever issued to a non-rail motor carrier applicant on the strength of a showing that rail service was inadequate or could be improved. It has always been necessary for such applicants to show that motor carrier service—not rail service—was inadequate.

No railroad has ever secured the right to construct a new railroad or an extension by showing that existing motor carrier or water carrier service was inadequate. Al-

ways it has been necessary for such applicants to show that existing railroad service was inadequate. No water carrier applicant has ever been granted a certificate just because the service would represent an improvement over some other form of transportation. Each form has always been regulated on the basis of conditions in that one field. These motor carrier applications by railroads and their subsidiaries are the only departures from the Congressional mandate.

Appellant's principal arguments stem from a contrary viewpoint. The claim that the proposed motor carrier. service will be better than rail service is at the bottom of almost everything they say. They argue that the tests applied to all others do not apply here. They say that the Commission finding that the proposed service will be more efficient than railroad service and that it will effect savings to the railroad is sufficient because the power to decide what constitutes proof of public convenience and necessity is confided exclusively to the Commission. The doctrine of administrative finality as to facts has no application. They confuse the right of the Commission to weigh and consider the evidence with the power and duty of the Court to determine whether the evidence and the findings based thereon are "those upon which its action can be sustained."

In his concurring opinion in the St. Joseph Stock Yards case, Mr. Justice Brandeis expressed our position on one point in the best possible language when he said:

"Moreover, where what purports to be a finding upon a question of fact is so involved with and dependent upon questions of law as to be in substance and effect a decision of the latter, the Court will, in order to decide the legal question, examine the entire record, including the evidence if necessary, as it does in cases coming from the highest court of a State."

St. Joseph Stock Yards Co. v. U. S., 298 U. S. 74.

In that same opinion we also find a summation of the powers and duties of this court. Every ground for revers

ing an order set out in this summation applies particularly to this case: .

"It may set aside an order for lack of findings necessary to support it, Florida v. United States, 282 U. S. 194, 212215; or because findings were made without evidence to support them, New England Divisions Case, 261 U. S. 184, 203; Chicago Junction Case, 264 U. S. 258, 262-266; or because the evidence was such 'that it was impossible for a fair-minded board to come to the result which was reached, San Diego Land & Town Co. v. Jasper, 189 U. S. 439, 442; or because the order was based on evidence not legally cognizable, United States v. Abileng & Southern Ry. 265 U. S. 274, 286-290; or because facts and circumstances which ought to have been considered were excluded from consideration, Interstate Commerce Commission v. Northern Pacific Ry., 216 U. S. 538, 544-545; Northern Pacific Ru. v. Department of Public Works, 268 U.S. 39, 44; or because facts and circumstances were considered which could not legally influence the conclusion, Interstate Commerce Commission v. Diffenbaugh, 222 U. S. 42, 46-47; Florida East Coast Ry. v. United States, 234 U. S. 167, 187 (74,75).

The standards established in U. S. v. Carolina Freight Carriers Corpn., 315 U. S. 475 and Eastern-Central Motor Carriers Association v. U. S., 88 L. 431 and the reasoning the Court uses in those cases apply here with equal force.

Existing service must be considered. It cannot be said that a new carrier is required if those operating can furnish all the service the public needs. The cases indicate Commission agreement with this interpretation. In their briefs the appellants now argue that the proposed service had already been found to be "different" from ordinary motor carrier service as a pure matter of law and that, therefore, it must be assumed we cannot furnish it as well as the applicant. This assumption is contrary to all evidence and is an erroneous and discriminatory interpretation of law, as we shall demonstrate. But we contend that

a motor carrier case cannot be decided on evidence dealing only with railroad service as has been done here. We contend that rail service is not to be considered at all in a motor carrier case. But certainly if it is given weight such action can only be justified by arguing that the Commission may take all kinds of service into account. Such a theory would not warrant a grant unless it was shown that both rail and truck service was inadequate. The appellant's chief argument is that a motor carrier certificate may issue without giving consideration to existing motor carrier service — that the condition of rail service is the sole consideration. The decision is based on an erroneous interpretation of the law.

The Commission has held that:

"Necessity does not exist unless the inconvenience would be so great as to amount to an unreasonable burden on the community — the words imply an urgent immediate public need."

Public Convenience Application of A. & S. A. B. Ry., 71 I. C. C. 784.

Uncontradicted evidence establishes that present railroad and motor carrier service is adequately serving the public. There is no evidence to show that there is any "urgent immediate public need" for any improvement in either rail or motor carrier service. That this grant may result in service better than present rail service, is not proof that such a need exists.

But even if it had been shown that present rail service was so poor that it must be improved, such fact would not establish that the railroad must be granted the right to start a motor carrier operation. If the rail service is that poor, the Commission has ample power to compel improvement.

What the Commission really means is that while rail service, as such, is satisfactory, motor carrier service is better. This inherent advantage, being always present, must always result in the grant of a motor carrier certificate to an applicant railroad. But it never results in such

action where the applicant is not rail owned. That is why we say that the order would not have issued if the applicant had not been rail owned.

But these arguments by the appellants do not touch the real basis for the Commission action. This nebulous theory they advance requires the Court to speculate and guess at what the Commission intended. We cannot disregard the plain language of the order. Its two major grounds for the grant are:

- 1: "While several motor carriers operate over portions of the routes involved and in some cases perform similar station-to-station service for the Pere Marquette Railroad, it must be borne in mind that the railroad has been and is transporting the traffic in question between its stations and is under an obligation to continue to do so."
- 2: "We are not impressed by protestant's contentions and are of the opinion that the proposed co-ordinated service will serve a useful public purpose, and that such useful public purpose cannot be served as well by existing motor carriers" (10-11).

Plainly these two assertions are statements of principles of law — principles that have guided and controlled the decision. The first asserts that as a matter of law, the legal obligation of the railroad to operate as such compels the grant of a right to also operate as a motor carrier regardless of all other facts or conditions. If that is the law, then no evidence can have any effect on the outcome. The balance of the order is surplusage — and it is completely without force since the legal principle upon which the order turns is unsound.

But the railroad is not the applicant, The service proposed is a joint or connecting line service in part at least. The "obligation" of one connecting line carrier does not give it the right to transport beyond the point of transfer as this finding assumes.

Part of the service proposed will have no connection with the railroad. The applicant will pick up, transport

and deliver wholly by motor truck without any prior or subsequent move by rail. Clearly this finding means that, as to such service, the "obligation" of the appellant's owner is a general one to transport — not to transport by rail only. The mere fact of rail ownership, therefore, is considered ample proof that the public convenience and necessity requires the grant of a motor carrier certificate.

Obviously it cannot apply to a non-rail owned applicant. Only railroads have an "obligation" to function as a railroad. Would it be contended that the corresponding "obligation" of a motor carrier to operate as a motor carrier carried with it the right to also operate as a railroad? And if not, is not the discrimination self-evident?

The second controlling principle advanced makes it a matter of law that if, in Commission opinion, the applicant can perform better than the existing carriers, the new line must be "required by the public convenience and necessity". This amounts to saying that as a pure legal proposition, the fact that a new carrier may be able to better perform compels the grant of a certificate even though the service the public is receiving is completely satisfactory and adequate.

This oblique way of saying that existing service is inadequate is not the clear unambiguous finding required. It is contrary to all of the evidence. In fact it is not based on evidence at all but rather on a wholly untenable theory.

The applicant's railroad witnesses admittedly had no knowledge of existing service. We presented uncontradicted proof that we are furnishing the desired service satisfactorily for another railroad. Applicant's shipper witnesses admitted that existing motor carrier service is satisfactory. The same is true with respect to rail service. The order finds that we are furnishing this service just as it also finds that the applicant is furnishing it in other states. All the evidence, therefore, disputes the finding that we cannot furnish the service "as well as" the applicant. It cannot be rationally inferred that we cannot furnish it "as well as" the applicant.

The rule of law that has been substituted for evidence began, in prior cases, with an assumption that there are two kinds of common motor carrier service. The first is that having no connection with rail movements. The second is that involving a joint or connecting line operation.

In the first cases the Commission agreed that there could be no grant to a railroad of the right to perform the first or ordinary type of service since existing carriers could satisfactorily perform it. In the absence of proof that existing motor carrier service was inadequate, a railroad could not be authorized to furnish this regular or ordinary type of motor carrier service.

At the same time, however, the Commission did grant the railroad a common motor carrier certificate permitting joint or connecting line service. We shall demonstrate that this was done on the strength of a Commission belief that could not be changed by evidence.

The Commission started off with the seemingly fixed idea that all connecting line operations between railroads and motor carriers were "different," and that, therefore existing motor carriers could not furnish that type of service. No adequate explanation of what creates this "difference" was ever given. The more it is "explained," the clearer it becomes that there is no "difference" that in Commission opinion rail ownership or service for a railroad, automatically makes any motor carrier service "different". The Commission had the preconceived notion that only rail owned motor carriers could furnish it. They conceded that public convenience and necessity could not require the creation of a new carrier if existing carriers could furnish the service but found that existing carriers could not do so because it was a "different" or "co-ordinated" service. Their argument on brief hangs on that one contention.

Soon, however, the Commission went all the way with the railroads and removed the restriction which had prevented the performance of ordinary or pure motor carrier service. The basis for the change is buried in obscure and difficult language but appears to be no more than acceptance of the railroad argument that it cannot perform this "different" or "co-ordinated" service with profit to itself unless it also has the right to perform the other type.

At the same time the Commission continued to advance exactly the same arguments in identical language that had been used when it was restricting the service to this allegedly "different" service. It continued to call this a "different" "rail-truck" service and to speak of it as something requiring "close co-ordination" because it was a joint or connecting line service, yet granted certificates that permitted the performance of pure motor carrier service.

Our case is the direct descendant of those cases. Exactly the same language is used. The Commission claims that the operations will be "different" because they will be in substitution for train service yet authorizes the performance of pure motor carrier service that is not a "substituted" service. It calls it a "new form" of service to be operated in "close co-ordination" with the railroad yet plainly permits the applicant to perform ordinary unco-ordinated motor carrier service having no closer relationship to the railroad than ownership of the carrier. On this basis it concludes that we cannot perform this allegedly "different" service "as well as" the applicant — inferring that existing service is inadequate.

But the evidence shows without contradiction that there is adequate service of both kinds. No witness said otherwise. If part of the service is 'different' despite the uncontradicted proof to the contrary, the record still shows that we can adequately supply it — that we are in fact doing so for another railroad. The only support for the order, therefore, must be found in the preconceived Commission opinion that this joint or connecting line service demands common ownership — that it demands rail ownership of both carriers.

Even so, this cannot furnish even moral support for the grant of a right to furnish the common or garden variety of pure motor carrier service. The grant of a right to perform ordinary or unco-ordinated motor carrier service is, therefore, without support in fact, theory or argument.

The order embraces the right to furnish both kinds of service over seven separate routes covered by seven separate contracts. An independent motor carrier is presently furnishing service on one of those routes. He had been doing so for years. There can be no doubt, therefore, about his ability to perform "as well as" the applicant. No complaint was registered against his service. Yet the order will utterly destroy that carrier.

The mere fact that seven separate routes are combined in one application does not remove the necessity of the applicant's proving that the service on each of those routes is inadequate.

Many other defects will be discussed in detail in the body of this brief. We mention one other important one. The conduct of the case violated every rule of justice and fair play. The relations between the railroad and its subsidiary are presumably covered by seven contracts. One of them was exhibited to the Joint Board but we were deprived of all opportunity to see it or to use it in examination of any witness. The applicant was then permitted to file it after the hearing had closed. Everything in the order based on the alleged "difference" of the proposed service from that of ordinary motor carrier service could have been shattered through our use of this document if it had not been withheld from us.

This case and the one following it on the calendar are alike in the basic issues. While there are obvious procedural and evidentiary differences, the basic concepts upon which the Commission orders stand are precisely the same. The Attorney General made substantially the same arguments we here present in the trial of the other case below. He opposed the grant in that case and his arguments parallel our own. We used them in the Court below in the trial of this case. We have adopted portions of his argument to show its complete agreement with our own

position on the controlling issues. His reason for not supporting the commission in the appeal will be readily apparent.

The Court will find it difficult to understand the precise basis for the Commission order. Much is left to conjecture and surmise. We shall show that the applicant's proof dealt primarily with railroad convenience.

It is our contention that the theory upon which this case has been determined must always result in the grant of a certificate to a railroad applicant. We contend that the tests the Commission suggests are not tests at all but rather an ambiguous way of saying that all railroads should be permitted to operate as motor carriers. We submit that the tests can apply only to railroad applicants and that for that reason they are obviously discriminatory.

We contend that the Commission has wrongly defined the statute — that its errors stem from that fact. We contend that the evidence cannot rationally be given the legal-effect placed upon it by the Commission. The decisions of this Court which hold that an order must be set aside if it could not rationally have been reached by a fair-minded person, apply with especial force in this case.

The railroad position on brief is that only a rail-owned carrier can satisfactorily supply motor carrier service for a railroad. They claim that the prior cases have made that an inflexible rule. Thus do they forever foreclose opposition. Thus do they invent a rule that can only apply to rail-owned applicants. Their brief sums up to a contention that the inherent differences in the two forms of transportation satisfies the statute regardless of the fact that present rail and motor service is adequate.

The railroads have construed the Commission formula in exactly the manner we describe. At the very outset of our case the railroad argued that the case had already been determined by the findings in prior cases. On the strength of this belief the railroads of the nation are now embarking on wide scale invasions of the motor carrier field. The Pennsylvania Railroad presently has an application pending that will duplicate substantially all of its remaining mileage in Ohio. It has already duplicated most of its mileage in the other states in which it operates. It has no less than twenty-two motor carrier subsidiaries. It is no idle statement to say that through this doctrine the railroads of the nation will be able to automatically engage in competition as a motor carrier with every other motor carrier and to carry on operations from coast to coast.

ARGUMENT

At the outset, we want to make it perfectly plain that we are not inviting the Court to weigh the evidence in the usual sense of that phrase. But we do ask the Court to apply the doctrine set out in Crowell v. Beasen in which it said:

"The recognition of the utility and convenience of administrative agencies for the investigation and finding of facts within their proper province, and the support of their authorized action, does not require the conclusion that there is no limitation of their use. and that the Congress could completely oust the courts of all determinations of fact by vesting the authority to make them with finality in its own instrumentalities or in the Executive Department. That would be to sop the judicial power as it exists under the Federal Constitution, and to establish a government of a bureaucratic character alien to our system, wherever fundamental rights depend, as not infrequently they do depend, upon the facts, and finality as to facts becomes in effect finality in law."

Crowell v. Benson, 285 U. S. 56-7.

We especially make the point that the order does not contain the basic findings of fact required by the statute and the decisions of this Court:

"This court has held that an order of the Interstate Commerce Commission is void unless supported by findings of the basic or quasi-jurisdictional facts conditioning its power. Florida v. United States, 282 U. S. 194, 215; United States v. Baltimore & Ohio R. Co., 293 U. S. 454." In the absence of such findings, we are not called upon to examine the evidence in order to resolve opposing contentions as to what it shows or to spell out and state such conclusions of fact as it may permit. Florida v. United States, supra. Orderly review requires that this objection, being basic and jurisdictional, be disposed of at the beginning."

United States v. Chicago M., St. P. & P. R. Co., 294 U. S. 504.

We are also making the point especially that the findings that are set out in the order are obscure and ambiguous. The further language of this Court from the case is especially applicable:

"We would not be understood as saying that there do not lurk in this report phrases or sentences suggestive of a different meaning. One gains at places the impression that the Commission looked upon the proposed reduction as something more than a disruptive tendency; . . . The difficulty is that it has not said so with the simplicity and clearness through which, a halting impression ripens into reasonable certitude: In the end we are left to spell out; to argue; to choose between conflicting inferences. Something more precise is required in the quasi-jurisdictional findings of an administrative agency. Beaumont, S.: L. & W. Ry. Co. v. United States, 282 U. S. 74, 86; Florida v. United States, 282 U. S. 194, 215. We must know what a decision means before the duty becomes ours to say whether it is right or wrong" (510-11).

This Court, in another case, has said:

"In the absence of such findings, we are not called upon to examine the evidence in order to resolve opposing contentions as to what it shows or to spell out and state such conclusions of fact as it may permit. The Commission is the fact-finding body and the Court examines the evidence not to make findings for the Commission but to ascertain whether its findings are properly supported."

Florida v. United States, 282 U. S. 215.

In yet another case, the Court said substantially the same thing in even stronger language:

"The Commission's failure specifically to report the facts and give the reasons on which it concluded that und the circumstances the use of the average or group basis is justified leaves the parties in doubt as to a matter essential to the case and imposes unnecessary work upon the courts called upon to consider the validity of the order. Complete statements by the Commission showing the grounds upon which its determinations rest are quite as necessary as are opinions of lower courts setting forth the reasons on which they base their decisions in cases analogous to this."

Beaumont, S. L. & W. Ry. v. U. S., 282 U. S. 86.

These rulings by the Court were affirmed again in United States v. B. & O. R. Co., 293 U. S. 462. In a relatively recent case the Court used perhaps the most expressive language on this subject:

"But if the action is based upon a determination of law as to which the reviewing authority of the courts does come in to play, an order may not stand if the agencies has misconceived the law. In either event the orderly functioning of the process of review requires that the grounds upon which the administrative agency acted be clearly disclosed and adequately sustained "" we merely hold that an administrative order cannot be upheld unless the grounds upon which the agency acted in exercising its powers were those upon which its action can be sustained."

Securities and Exchange Com. v. Chenery Corp., 318 U. S. 94-95.

In the case of United States v. Carolina Freight Carriers Corporation, 315 U.S. 488, the Commission repeated and strengthened the points and arguments set out above. The case also is authority for several other arguments we make in this brief. The Commission has deliberately departed from the standards created by Congress and has applied a discriminatory interpretation of the statute:

"The precise grounds for the Commission's determination that only certain commodities could be carried and that only a few could be transported between designated points are not clear. It is impossible to say that the standards we have set forth were applied to the facts in this record. Hence as in the Florida v. United States, 282 U. S. 194, 215, 51 S. Ct. 119, 125, L. Ed. 291, the defect is not merely one of the reasons for the decision; it is the 'tack of the basic or essential findings required to support the Commission's order' * * * Congress has prescribed statutory standards pursuant to which those rights are to be determined. Neither the Court nor the Commission is warranted in departing from those standards because of any doubts which may exist as to the wisdom of following the course which Congress has chosen. Congress has also provided for judicial review as an additional assurance that its policies be executed. That review certainly entails an inquiry as to whether the Commission has employed those statutory standards. If that inquiry is halted at the threshold by read son of the fact that it is impossible to say whether or, not those standards have been applied, then that review has indeed become a perfunctory process. If, as seems likely here, an erroneous statutory construction lies hidden in vague findings, then statutory rights will be whittled away. An insistence upon the findings which Congress had made basic and essential to the Commission's action is no intrusion into: the administrative domain. It is no more and no less than an insistence upon the observance of those standards which Congress had made 'prerequisité to the operation of its statutory command' * * * Only when

the statutory standards have been applied can the question be reached as to whether the findings are supported by evidence."

United States v. Carolina Freight Carriers Corp., 315 U. S. 488-9.

See also:

The Chicago Junction Case, 264 U. S. 258; Interstate Commerce Commission v. U. P. R. R., -227 U. S. 547;

Texas & Pacific Ry. v. Gulf, etc. Ry., 270 U. S. 273; Yonkers v. U. S., 321 U. S. 689.

One of our chief complaints about the order in this case stems from the fact that the Commission has applied an interpretation of the statute that it would not have applied if the applicant had not been railroad owned — that the Commission has made a most discriminatory application of the statute. This was condemned in most vigorous language in the Carolina Freight Carriers Case cited above. At one place, the Court in insisting that the proper criteria had not been employed said:

"We conclude that there is no statutory warrant for applying to irregular route carriers a different or stricter test as to commodities which may be carried than is applied to regular route carriers. "In so far as that view establishes a different test for commodities which may be carried by irregular route operators than for commodities which may be carried by regular route operators it is erroneous as a matter of law. For facts sufficient to establish that a person is a 'common carrier' by motor vehicle in 'bona fide operation' in the one case are sufficient in the other" (484-5-6).

Facts

The original plaintiff, Parker Motor Freight, is a very small carrier operating from Grand Rapids to points in the sparsely settled northern end of the Lower Peninsula of Michigan. Traffic in that resort area is thought of in terms of pounds and pennies — not in terms of tons and dollars.

Since the case was started, every common motor carrier in the nation has joined the original plaintiff. Realizing the importance of the issues, the Regular Common Carrier Conference of the American Truc' ing Associations, Inc. have come to our support. These carriers appreciate the fact that there is but one issue — life or death. If railroads are to be permitted to enter the trucking business at will under a descriminatory application of the statute that has no relation to conditions in the motor carrier field, the days of an independent common motor carrier industry are numbered. If the Lower Court is reversed, the way is open to an absolute rail controlled monopoly in surface transportation. If the railroad is sustained in its arguments, then every railroad may obtain a motor carrier certificate for the mere asking.

The facts in this case are relatively simple. Ours is fairly typical of all these rail motor carrier cases. The Pennsylvania Railroad operates as a railroad from Fort Wayne, Indiana to Mackinaw City, Michigan, also serving several branch lines. A considerable number of motor carriers operate over the paralleling highways serving the same towns. No route or town is without motor carrier service. The railroad owns a subsidiary corporation engaged in operations as a motor carrier between other points served by the railroad. This subsidiary does not operate in the Michigan area involved in the application.

The railroad decided it wanted to institute a motor carrier service between all points on this Indiana-Michigan. railroad division. It caused its subsidiary to file an application under the Motor Carrier Act. This application is in the regular form used by all motor carrier applicants. Applicant seeks a motor carrier certificate embracing some seven separate operations covered by seven separate contracts.

At the hearing the railroad and the applicant admitted that they had no knowledge whatever about the operations or service of existing motor carriers. Indeed, they boasted that they had made no investigation. The railroad emphasized that it would not make use of such existing motor carrier service under any circumstance — even if the service offered was superior to that proposed by its subsidiary.

The applicant's proof dealt with benefits the railroad will receive if the certificate is granted. They compared the speed of rail service with that of the proposed motor carrier operation. They did not show that the railroad service was unsatisfactory to anyone or that any part of the public had objected to it. The railroad refused to accept any limitation that would prevent unrestricted motor carrier service between the points it desires to serve. They specifically explained, over our objection, why they did not want a restriction that would compel a prior or subsequent rail haul and made it clear, that they expected to pick up at shipper's docks and transport directly to the consignee without any connection with the rails (127-131). The statement on page 8 of their brief that: "all freight will originate as railroad freight" is misleading. A careful reading of their explanation does not negative the statements made immediately above.

The attitude of the railroad and of the applicant is that the existence or non-existence of adequate motor carrier: service is of no moment. They have tried the case on the theory that they need only show that the proposed motor vehicle operations would furnish, by comparison, a better service than the presently offered railroad service of the owner. The proof they presented was confined to showing that: (1) Merchandise could be handled with greater speed on motor vehicles than on the rails and; (2) such use of motor vehicles would be a benefit to the railroad owner of the applicant. They argue that such proof is sufficient to establish that the proposed new motor carrier operation is required by the public convenience and necessity. This was stated to be their position almost at the outset of the case when their counsel answered a question asked by the Chairman of the Joint Board:

"MR. EGGERS: In other words, Mr. Yockey, if it can be proven here that The Pennsylvania Railroad Company will improve its service to the public by the granting of this application, then that alone is sufficient, and it should be granted; is that correct?

MR. HARRY YOCKEY: Yes" (186).

Earlier in the case the applicant's counsel, in objecting to some of our questions about their witnesses' lack of knowledge of existing facilities, had this to say:

"MR. HARRY YOCKEY: Now, just a moment. We want to object to that. The Commission has held in all of these rail cases that the Commission has no jurisdiction or authority to require a railroad to deal with an independent truck line. The Commission has held that that is outside of its jurisdiction, and that the railroad has a right to deal with its own subsidiary; and the Commission has no jurisdiction or authority to require the railroad to do otherwise. Now, this particular question, as to whether he did or whether he did not make such an investigation that counsel refers to, is not pertinent to this particular issue."

We followed his statement of position with these words:

"MR. CLARDY: I contend, under the statute, that in every case it is permissible, and altogether proper, to find out whether the applicant, or any shipper, or anyone else who appears in support of the application, has made any investigation into the already available transportation facilities" (153).

Theirs was no hasty and illconsidered statement of position. In their Reply to our Exceptions, after the Examiner had held against us, applicant's counsel said:

"Protestants take the position that practically the only issue involved is the question as to whether or not there is available motor carrier service available by independent truck operators. They argue at length that if there is partial or complete available independent motor carrier service over the routes in question that the Commission is powerless to grant a certificate to a subsidiary under circumstances such as we have in the instant case."

"This contention of the protestants is definitely decided contrary to the contention of the protestants in practically every one of the cases we are citing in this reply, and need not be replied to in detail" (844).

Nor is this all. In that same document they say:

"We have hereinbefore replied to the claims of protestants that convenience and necessity can only be had in a case of this type the same as if the application were by an ordinary motor carrier seeking an entirely new independent motor carrier's business. This of course is not the law. Whereas in the instant case the railroad is only seeking to improve a present existing service by substitution of trucks for way-car service" (860).

In their brief in the Lower Court they said:

"The purpose of the applicant and of The Pennsylvania Railroad Company, as stated by applicant's witnesses, among other things is the improvement of the service so as to retain the less than carload business which The Pennsylvania Railroad now enjoys and to more efficiently, expeditiously and economically serve their patrons ". It is the purpose of the Pennsylvania Railroad to retain by the institution of this improved new service that less than carload business which it now enjoys."

Willett Company Brief, Page 49.

As a sort of summary of their contentions, they set out the following on page 72 of that brief:

"The Pennsylvania Railroad has the right to select its own agent in performance of the agency involved in these proceedings, and that the Commission is without jurisdiction to compel it to deal with any agent other than its own choosing."

One other point was made crystal clear at the very outset. Applicant's counsel, in his opening statement, explained why the railroad did not wish a restriction in the order which would prohibit the applicant from picking up freight at the dock of the shipper for transportation directly to the consignee without any rail movement at any time. He explained that they wanted what they called the "key-point" restriction inserted in lieu of the "prior or subsequent" restriction that had been imposed in some other cases. He went to some length in explaining that the requirement of a prior or subsequent rail movement would, in some instances, be "detrimental to the railroad in its operation through this truck line in the rest of its movement" (77). He explained that the so-called "keypoint" restriction would insure that the movements would be only to the intermediate points - that there would be no truck service between the larger towns named as such key-points. But, in making his explanation, he also succeeded in showing the Joint Board that they intended operating in exactly the same fashion as an ordinary motorcarrier. A Joint Board member asked:

> "MR. BARKELL: I still do not just understand the difference between the two methods, or the two operations. Does not the key-point system require a rail movement?

MR. HARRY YOCKEY: No, it does not:

MR. BARKELL: Not at all?

MR. HARRY YOCKEY: No, it does not. However, the Commission feels, in inserting that, that it does insure that it will keep that railroad business: and it is the intention of the applicant here to do that" (78).

One of counsel then asked Mr. Yockey:

"MR. ANDERSON: Now, there is this other question also: If, as you say, you expect this business to be all railroad business, and not to be in competition with the common carriers by motor vehicle, why are you unwilling to have the 'prior and subse-

quent rail movement' clause inserted in your request in this application, or in your certificate, if one is granted?

MR. HARRY YOCKEY: Well, that would undoubtedly hamper us in connection with a percentage of our business" (79).

The real key to the attitude of the railroad and the applicant is to be found in another remark by their counsel' in his opening statement:

"The evidence here will further show that The Pennsylvania Railroad does not care to enter into this kind of arrangement with other truck lines" (76).

The applicant's case is based on the testimony of three witnesses — its General Manager and two employees of its owner, the Pennsylvania Railroad. The testimony of the shippers was unimportant to the applicant's theory and case, as we shall demonstrate below.

All three of their principal witnesses devoted most of their testimony to the subject of claimed benefits that would accrue to the railroad if its subsidiary should be granted the certificate. All of them made a point of the fact that they had no knowledge of existing motor carrier service. The first (rail) witness (Christie) stated:

"I have not made any investigation whatever of any motor carriers along any of these seven routes and I have no desire to and I do not intend to" (414).

The second (rail) witness (Symes) admitted he, had no knowledge of the existing motor carrier facilities. He was asked:

"Q. Very well. Now, over my objection you were permitted to answer a question or two, and so was the preceding witness. I want to find out now if you made any independent investigation, either on behalf of the railroad company or its subsidiary. The Willett Company, into the available trucking service already in the field before this application was filed?

A. I did not" (153-154).

Their third witness (McArdle), manager of the applicant, also admitted that he had no knowledge about any of the common carrier service available between the points covered by the application (234). At another point this important witness said:

"Q: (By Mr. Anderson) Do you know how many there are?

A. No, sir.

Q. And you never made any effort to find out, did you?

A. No" (205).

The shipper witnesses were not interrogated on that subject by the applicant. Since only four of those witnesses were sworn and presented on the stand, we shall set forth a few short citations from their cross examination to show that they either admitted that existing motor carrier service as well as their rail service was completely satisfactory, or that they had no knowledge on the subject.

Witness Caton:

"Q. You are receiving your shipments that come into you from Carolina points by The Pennsylvania Railroad satisfactorily, are you not?

A. Yes (245)...

Q. You have no complaint to make against the service that has been rendered you by O. I. M., have you?

A. No (247).

Q. In other words, then, with the service which you are receiving at the present time, both from the Pennsylvania Railroad, as it is now operating, and from the various trucking lines that are serving you. I take it that your transportation needs are adequately served, are they not?

A. As best I know (248).

Q. Was that because the type of service which you are receiving and have been receiving from the railroad, was good enough to take care of your needs?

A. Yes, sir (255).

Q. Now, Mr. Witness, then as I understand the situation, your transportation needs at the present time are, generally speaking, pretty well taken care of; is that correct?

A. Quite well, yes (258).

Q. Do you know anything about The Willett Company?

A. No, sir' (245).

Witness Button:

"Q. Associated Truck Lines has been serving your company for a great many years, has it not?

A. Yes.

Q. And the service has been pretty good, has it not?

A. Well, yes.

Q: And that is generally true of the other common motor carriers also; is it not?

A. Yes, sir — it is generally true (270-271).

Q. Has the rail service when you used it to and from Fort Wayne, been satisfactory to you?

A. Well, as far as we know it has, yes, sir; but of course, I cannot speak for our customers. In other words, they might make complaint to the railroad company, and we would not know anything about it.

Q. I mean, so far as you are concerned?

A. Yes.

A. Generally speaking, I would say that we are satisfied with the service; yes, sir" (286-7).

Witness Dinkel:

"Q. You are working for The Pennsylvania Railroad Company at the present time, are you?

A. No, sir; I am not — well, I operate the truck, or my men do; I hold the contract, and my men do the pickup and delivery work.

Q. Well, then, you are making pickups and deliveries for The Pennsylvania Railroad at the present time, are you not?

A. Yes (296).

Q. You have been working for the railroad for about how long?

A. For about four years (298).

Q. Did I correctly understand you to say that you are getting all your shipments at the present time over the Pennsylvania Railroad?

A. Yes" (294).

This man's connection with the railroad was not even hinted at on direct and developed only accidentally on cross examination. That fact was deliberately concealed. He admitted that he had appeared at the hearing at the request of the railroad (297).

The last of the shipper witnesses (McDowell) testified:

"Q. Yes. Well, your business is satisfactorily served, so far as transportation is concerned, at the present time, is if not?

A. Yes, sir; generally speaking.

Q. The transportation facilities which you have available from the Pennsylvania Railroad and all the different truck lines that serve you, are adequate to meet your needs, are they not?

A. Yes (304-5).

Q. When was the last time that the Pennsylvania Railroad fell down in its service to you?

A. 'Never.

Q. It has never fallen down yet?

A. No.

Q. Then, the railroad has satisfactorily taken care of you at all times, has it?

A. Yes, sir" (307).

The applicant has summarized the examination of their shipper witnesses on the subject of the adequacy of existing service in the following language set out in their brief below: "Present service of the Pennsylvania Railroad and the various truck lines that are serving us are adequate unless they could improve on the service in some way or other of course" (Tr. 318-319).

In objecting to some of our cross examination of these four witnesses as to their knowledge about the applicant and the kind of service to be furnished, applicant's counsel stated that they were not submitting any of the shipper witnesses to establish that there would be any saving of time or any other improvement as a matter of fact (279-84). Mr. Yockey specifically said that:

"these men know nothing about the operation of the railroad, or practically nothing" (281).

This last shipper witness also admitted that he would have no objection to having the proposed service furnished by existing carriers (306). This admission by the terms of the stipulation is also made part of the testimony of all of the balance of the witnesses. It was expressly agreed that the entire cross examination of the four witnesses who had been presented on the stand should apply as the cross examination of each of the witnesses not so presented. In other words, all of the questions and answers we have cited above from our cross examination of the four witnesses who took the stand is to be considered as the crossexamination of all of the balance of the witnesses. This means that each and every one of those witnesses, therefore, has specifically admitted that existing railroad and motor carrier service is adequately serving his transportation needs (309).

The railroad and the applicant now admit this to be true. (See Railroad Brief 13-14). But when they say, that these witnesses testified that this improvement in service was "fast becoming more and more of a necessity to them", they are going far beyond any reasonable interpretation of the record. Our review of the exidence in the preceding pages of this brief indicates that every witness freely admitted that present rail service is completely satisfactory

- not a one registered a single complaint about time in transit. The record references they cite deal with the witnesses Caton, Button and McDowell. Caton and McDowell did not say anything about this becoming a great necessity - they merely stated that they would "like" the service. We invite careful scrutiny of all of the testimony of the witness Button. He is the only one who even mentioned competition. All he said was that in these times faster service would naturally be satisfactory. But he did not state that the lack of such speed had in any way interfered with their business - he did not say that it was badly needed. And he is the only witness who used the word. It is not a rational inference therefore to say that there is a necessity shown for all shippers, towns and routes, when only one shipper at one town makes this weak assertion - and which he contradicted when he admitted later that present rail service is adequate (286-7). This is not the substantial evidence required.

The further statement in their brief that witnesses said that this improvement in rail service was "an absolute necessity" is not supported by the citations they give. In each instance the stereotyped question was asked whether this service would "serve the convenience and necessity of your particular business." But at no point was any witness even asked to delineate any reason why or to point out in what particular the lack of that expedition made the improvement necessary. In view of their admissions to us, on cross examination set out earlier, this general answer that the improvement would "serve" their convenience and necessity is valueless.

The applicant's proposed service does not differ from that of all other common motor carriers. The applicant's chief witness (Christie) was only able to say on cross examination:

"A. For the reason that any freight which is hauled by The Willett Company will be handled on Pennsylvania Railroad bills — on Pennsylvania Railroad tariffs, and Pennsylvania Railroad bills of lading. They will be responsible for it, and for that

reason I would say that the operation of The Willett Company is different from any common carrier truck company.

MR. ANDERSON: That may be true; but then, I asked you another question. I asked you the further question: 'Is that your only reason?'

A. Well, it is the only reason that I can think of right now. There may be different reasons, but I don't know" (379-380).

No other fact was presented on this subject of "difference". The railroad forms will be used — the solicitations will be by the railroad — that is all. This makes it clear why the Commission brief states that the Commission had already established as a matter of law, that service for a railroad is different. This makes it clear why they refrain from citing any of the evidence on the subject.

The second witness (Symes) was not asked to and did not detail any claimed difference in the character of this service and that of ordinary common carriers. The third witness, however, (McArdle) the applicant's general manager, tried on cross examination to distinguish between the proposed service and that of the ordinary motor carrier by saying that it would be restricted to service for the Pennsylvania Railroad. After much quibbling and a reprimand by the Joint Board (216), he finally admitted that the actual physical manner of operation would be the same as that of any other motor carrier:

"Q. Now, Witness, when a common motor carrier comes up to the dock of a shipper, is there any difference in the way that that carrier handles the freight at the dock of the shipper and the manner in which you will handle the freight at the dock of the railroad company, under the description which you have just given me?

A. No, sir" (213).

Applicant's first and principal witness (Christie) admitted that he did not know whether or not the claimed savings to the railroad could be attained as well through use of existing carriers:

"Q. You testified in that connection as to savings that might be effected by the rail-truck movement, meaning The Pennsylvania Railroad and The Willett Company, between certain points, and from certain points; and I will ask you now to state if that same saving could not be effected by The Pennsylvania Railroad interlining and transferring its freight at the break point shown there, to other authorized common carriers operating over the same route as you are proposing to operate over here?

A. I don't know. The question is such that I don't want to answer it, or try to answer it, any other way than what I have. I don't know what we could do, because I haven't investigated into it" (380-1).

In face of such testimony by applicant's own chief witness, how can the Commission be upheld in contending that we cannot furnish the service "as well as" the applicant?

But that lack of knowledge was not the sole reason why the railroad would not make use of existing motor carrier service:

"Q. (BY MR. CLARDY): Witness, would you, — or rather, would the railroad company which you represent, under any circumstances avail itself of the service of any common motor carrier operating over the routes in question, or any part of them, even though that service might be equal to or better than that which is proposed by the applicant in this proceeding?

A. No, sir" (419-420).

This is the real reason why the grant was made. The railroad will not "co-operate" or "co-ordinate" with ordinary carriers — the Commission has said in other cases

that it cannot compel such action by the railroad — hence the grant. The Commission repeats this in its brief.

At another point this same witness was asked whether he had made any study as to what economies could be effected by using existing motor carriers. He stated that he had made "none whatever" and that

"we are not interested in that" (383).

In substance we proved without challenge that there is adequate available common motor carrier service on all of the routes. Not only that, but we proved that several of the protestants were then engaged in furnishing precisely the same sort of service for the Pere Marquette Railroad over a number of routes in the same general. Michigan territory. In passing, it should be noted that for years one of the routes involved in the application has been and is now being served by an independent motor carrier under contract to the railroad. He will be eliminated if this Commission order is upheld. His service has been satisfactory.

The statement on page 9 of the Railroad Brief that "none of the existing independent operators who protested the application served all of the points in question on the railroad's line" is not true. The very pages they cite disputes their contention. And the Commission has expressly found to the contrary. But since each of the seven separate routes is to be a separate operation, and with the service of not less than two competing carriers available on each route, this is unimportant any way.

The amazing statement that existing carriers' schedules would not fit properly into the connecting rail movements set out on page 9 of their brief is exactly 100% contrary to the evidence. Our witnesses expressly stated on the very pages they cite that they would run additional schedules if necessary to meet the railroad demands. But they pointed out that the rail schedules would not result in the expedition claimed because of conditions at these small towns. Later on we forced the designer of

the truck schedules (Christie) to admit that the schedules undoubtedly would have to be changed (367-8). But since the Commission has made no finding on this subject the point is of no moment.

The evidence does not establish, as they assert, that the service of the independent operator on one of the routes is not satisfactory. We ask the Court to read the transcript carefully on that point (390-91).

Our witnesses also established without challenge that the service here proposed is exactly the same as ordinary common motor carrier service and that it is the same as the service being performed by the protestants for the Pere Marquette Railroad. The several witnesses also indicated a desire, willingness and ability to furnish this service for The Pennsylvania Railroad.

One of the carriers had testified that they had offered their service to the railroad only to have it refused.

"A. As a matter of fact, I have already offered my service to The Pennsylvania Railroad, but they replied that they were already well taken care of by The Willett Company and Pennsylvania Truck Lines" (456).

The Commission has expressly found that these things are true and that several of the protestants could furnish the service proposed by the applicant. This is so important we set forth the exact language of the Commission order:

"Protestant, Parker Motor Freight, of Petoskey, operates a general-commodity service in interstate commerce from Grand Rapids to Mackinaw City, Traverse City, and Harbor Springs; Mich., overoutes which duplicate a portion of the proposed routes. However, this carrier does not serve intermediate points between Grand Rapids and Cadillac nor Lake City. If the railroad were to offer its less-than-carload freight to this carrier, the latter could render overnight service between Grand Rapids and points on its routes.

Another protestant, O. I. M. Transit Corporation, of Fort Wayne, performs a similar service between Fort Wayne and Kalamazoo, serving all intermediate points. Three of its vehicles operate daily between Fort Wayne and Kendallville and two between Fort Wayne and Kalamazoo. This carrier is also willing and able to handle the less-than carload traffic of the railroad.

Norwalk Truck Line Company, of Norwalk, Ohio, has 600 units of equipment and operates between Fort Wayne and points in Michigan south of Grand Rapids. The proposed route between Fort Wayne and Grand Rapids will duplicate a portion of this carrier's routes. It performs overnight service between those points and is also willing to accept motor. for-rail shipments from the railroad.

Dallas L. Darling Truck Line, of Grand Rapids, operates between Grand Rapids and Cadillac, and renders daily service between Grand Rapids and Big Rapids, Mich. At the time of the hearing it was serving the Pere Marquette Railroad in substituted service and it would serve the Pennsylvania Railroad in like manner if given the opportunity.

Associated Truck Lines, of Detroit, Mich., operates approximately 400 pieces of equipment. This protestant renders daily service between points covered by the application and has equipment available to serve all of the proposed routes.

Inter-State Motor Freight System, Inc., of Grand Rapids, operates between Fort Wayne, Traverse City, and Petoskey, and between Grand Rapids and Muskegon. It has "peddler" runs from Fort Wayne to Sturgis, Mich., from Sturgis to Kalamazoo, Mich., and from Kalamazoo to Grand Rapids. It operates approximately 300 vehicles in Michigan and had 50 idle vehicles in that State at the time of the hearing. Shortly before the hearing, it made arrangements with the Pere Marquette Railway Company to perform motor-for-rail service for that line.

These findings are more than justified by our evidence. See pp. 442-445; 456-460; 517-520; 593-600; 606-611; 641-650; 656-663.

The assertions on page 11 of the railroad brief about truck lines not desiring a certain type of traffic is not supported by anything on the pages they cite, nor by anything else in the record. Because of the many errors in the railroad's brief in interpreting the evidence, we ask the Court to scan every pake they cite with great care. In this particular instance they are asserting that the carriers are not interested in small shipments but the first witness whose testimony they gite is a shipper who did not say anything on the subject in question. The next page citation (495) likewise deals with testimony of a shipper who did not even mention the subject this page in the record is supposed to support. There is no reference to this subject at pages 642 and 656. The last citation (662) has to do with the festimony of the representative of a single carrier operating between Fort Warne and Kalamazoo. What he said pertains only to his own company - it does not refer to any other carrier or to any other route. But a complete reading of his testimony discloses that he did not say that they did not desire to handle these small shipments. Indeed, at page 664 he specifically said that they were handling such shipments. This misleading statement is typical of a number of others we find in their statement of facts and illustrate the way in which an erroneous picture is given by paraphrasing instead of citing the actual testimony. We turn now to the legislative history of the Act.

Legislative History of the Statute

The Act was initiated a number of years before its enactment by the National Association of Railroad and Utility Commissioners. The late Honorable Joseph B. Eastman, in his appearance before the House Subcommittee on Interstate and Foreign Commerce, had this to say:

"Now, so far as the bill itself is concerned, this bill originated in a bill that was drafted by the National Association of Railroad and Utility Commissions, by the committee on legislation of that association, and it derived in turn from a bill which was largely worked out by that association in co-operation with a committee of the Association of Railroad Executives, representing also the electric lines, and a committee appointed by the American Highway Freight Association, a trucking organization which has since been merged into the American Trucking Association, Inc. That bill eventually took the form of the so-called 'Rayburn bill'.

Last year when I recommended the regulation of motor carriers we took the Rayburn bill as the nucleus and adopted it with a few changes in certain respects. Since that time various criticisms and comments have come in and as a result of these, where we thought that the criticisms were warranted, we made certain modifications in the bill which we submitted last year, resulting in H. R. 5262 which is before you."

P. 36 January 19, 1935 Hearing Report.

It so happens that plaintiffs' counsel served as chairman of the legislative committee of the National Association of Railroad and Utility Commissions mentioned by Commissioner Eastman during the time the Rayburn bill was being put together. We appeared before the Committees of Congress in January of 1934 in that capacity. The witnesses generally, including Commissioner Eastman, referred constantly to the experience of the states in drafting, enacting and administering state statutes. It would indeed have been strange if a bill with such an origin had not reflected this state experience in many ways. The changes in our bill mentioned by Commissioner Eastman were not in the section under consideration here.

At another point in his statement to the committee, Commissioner Eastman said:

"Now, the specific objectives of the bill are, first of all, to guard against, a further oversupply of

transportation service, and that is done by the provisions for certificates of convenience and necessity or permits to operate. This is a provision which we found necessary in the case of the railroads and adopted in 1920. It has been a part of the Interstate Commerce Act, so far as the railroads are concerned, since that year, and in my opinion the situation in which the railroads now find themselves would have been considerably better if it had been a part of the. law long before 1920, because many railroad lines were built for which there was no proper need. This provision is an endeavor to control the supply of transportation and prevent it going beyond legitimate needs, and it has been characteristic of the regulation of motor vehicles in our States and in other countries. It has been a uniform requirement, I think, in all the States which have undertaken to regulate motor vehicles in this country

P. 27 House Committee Hearing Report.

At yet another point he said:

"We undertook at the start to find out what the State Commissions have been doing in the regulation of motor vehicles, because they have gone very extensively into that regulation and have had much experience with it. We wanted to find out what powers they endeavored to exercise and how successful they were in the use of those powers; what difficulties they had met with and how they felt those difficulties could be overcome."

P. 25 House Committee Hearing Report.

At yet another point in his discussion of the purposes and intent of the Act, Commissioner Eastman, after pointing out that the railroads were in favor of the regulation of their competitors, stated that if those railroads were "given an absolutely free hand" they could go very far towards eliminating some of their competitors (38). He then elaborated on that statement when a member of the committee asked him if freedom from a regulatory restraint would not also eliminate the railroads. He said:

"I think that is the reason why they are not anxious to have regulation much relaxed; but if you would permit the railroads, for example, to operate freely and without restraint, so far as competition with water carriers is concerned, I think they could do in many cases what they did in the early days; they could eliminate much of the water competition not only by cutting their rates but also by refusing to enter into joint rates with those lines."

P. 38 House Committee Report.

In his testimony before the Senate Committee, Commissioner Eastman repeated and emphasized the things he said before the House Committee. He said at one point:

"The most important thing, I think, is the prevention of an oversupply of transportation; in other words, an oversupply which will sap and weaken the transportation system rather than strengthen it * * The States have, I think, in all cases, found the necessity in their regulation of motor transportation to provide for that prevention of an oversupply." (P. 78).

Senator Wheeler, in discussing the bill on the Floor, made it very clear that the regulation of motor carriers was to be carried on entirely separate from the regulation of railroads. In Volume 79 there will be found a considerable amount of discussion on this subject. At one point the Senator said:

"There has been a fear upon the part of some people — in my judgment, an unfounded fear — if the administration of this bill were turned over to the Interstate Commerce Commission, that Commission might regulate bus and truck transportation in the interest of the railroads and not in the interest of the

general public, and that it might not give bus and truck operators a fair deal."

(C. R. 5883).

Some discussion then ensued by others who had voiced similar fears. We find the Senator finally saying:

*Coordinator Eastman has suggested — and we have written the subject into this bill specifically — that bus and truck operations should be viewed by the Commission in the peculiar light of their particular business, and that railroad rates should not be the yardstick for the rates which should be established for bus and truck operators."

(C. R. 5952).

One of the members of the House — Mr. Sadowski — had this to say:

"Section 202 sets forth the declaration of policy and vests invisdiction in the Interstate Commerce Commission. I want to say in this connection that in reporting out this bill your committee has no intent to undertake to suppress or restrict in any way the proper development of motor-carrier transportation by responsible carriers for the good of the public interest. Nor do we want motor-carrier transportation subservient to or restrained or rurtailed by any other transportation medium."

(C. R. 12684).

This same Congressman in commenting on the section dealing with consolidations said this:

"Section 213 provides that the Commission shall control the consolidation, merger, and acquisition of control of motor carriers. I will say in this respect that it is the intent, and it is important to the welfare and progress of the motor-carrier industry that the acquisition of control of the carrier be regulated

by the Commission so that the control does not get into the hands of other competing forms of transportation, who might use the control as a means to strangle, curtail, or hinder progress in highway transportation for the benefit of the other competing transportation."

(C. R. 12685).

These citations bear out our contention on several points. The fact that the bill was originally drafted by a committee of State Commissioners and that relatively few changes were made is evidence that the language was used in the same sense as in state statutes. The Ohio Supreme Court, in the only case on all fours with this one and cited elsewhere in this brief (79) (New, York Central Railroad Company v. Public Utilities Commission, 123 Ohio St. 370), has pretty well summarized the holdings and interpretations of State Commissions and State Courts. With this parentage the importance of the decisions of state authorities cannot be overestimated.

The above citations should also demonstrate that the Committee well understood that the main purpose of the bill was to remedy a condition brought about by an oversupply of transportation service. We think it equally clear that the existence of adequate service was understood to be a bar to the grant of new certificates.

It is also certain that the Congress was making sure that the railroads were not to be permitted to run away with things. At one point Commissioner Eastman said:

"Well, if it is different, it was put in there for this reason, that there has been a great deal of fear expressed on the part of the motor carriers that the Commission in its regulation of motor vehicles would not give consideration to conditions which are neculiar to motor vehicles and that it would be guided by railroad conditions in the regulation of motor vehicles."

P. 35 House Committee Hearing Report.

This statement, when coupled with his prior one to the effect that the railroads could very effectively destroy their competitors by refusing to enter into rate arrangements with them, should be a clear indication that the Congress had many reasons in mind why the railroads should not be given unfair advantages. The wisdom of those statements is demonstrated in our own case where the Commission and the railroad are arguing that a new certificate should issue simply because the railroad will not establish through routes and will not enter into any kind of an arrangement with existing carriers. This case has been decided on the strength of railroad conditions—conditions peculiar to motor carriers have not been given consideration.

The Attorney General in summing up his attitude on this question, in the companion case, had this to say:

"In furtherance of its policy of competition in the transportation field, Congress has prohibited the control of one form of transportation by another except under the most limited of conditions. 1912. Congress announced its policy of preserving the independence of water carriers by including in the Panama Canal Act a provision designed to prevent their domination by railroads. In 1938 a similar proviso was inserted in Section 408 (b) of the Civil Aeronauties Act. Likewise, in Section 213 (a) of the Motor Carrier Act of 1935, Congress undertook to preserve the motor carrier industry from domination or control by other forms of transportation which 'might use the control as a means to strangle, cartail or hinder progress in highway transportation for the benefit of the other competing transportation."

"This legislative policy was evolved out of years of experience. Seldom have new forms of transportation been developed by those engaged in operating the older means of transportation. On the contrary, the older transportation agencies have generally resisted the new, and have entered the new field only after its commercial possibilities have been

demonstrated and the more progressive form has come to be regarded as a competitive threat to the old. Then the purpose was generally to suppress the new form of transportation in order to profect investments in the more obsolete methods."

Other Expressions of Congressional Intent

The provisions of the section (5) dealing with prachases by railroads clearly indicates a congressional intent to keep railroads out of the motor carrier field except under special circumstances. The statute specifically says:

"Provided, That if a carrier by railroad subject to this part, or any person which is controlled by such a carrier, or affiliated therewith within the meaning of paragraph (6), is an applicant in the case of any such proposed transaction involving a motor carrier, the Commission shall not enter such an order unless it finds that the transaction proposed will be consistent with public interest and will enable such carrier to use service by motor vehicle to public advantage in its operations and will not unduly restrain competition."

Is it not rather anomalous to now argue that the Congress did not have a like intent in connection with new applications for certificates? Having erected a hurdle in the way of railroad acquisition by purchase, is it sensible to argue that the Congress has deliberately adopted a wholly contrary policy in connection with convenience and necessity cases? Is it reasonable to say that this plainly expressed congressional intent does not apply to the entire Act? Is it sensible to say that Congress would make it difficult for the railroads to purchase and yet, at the same time, completely undo that policy by permitting the railroads instant and automatic entrance into the motor carrier field under the doctrine governing our case?

Since the original enactment, Congress has had occasion to note with some alarm the fact that the Commis-

sion has been interpreting the Act contrary to the congressional intent. The Transportation Act. of 1940 brought together the statutes regulating rails, motor carriers and water carriers. As we have noted, Congress was apprehensive about confiding jurisdiction over motor carriers and water carriers in a Commission which some thought was railroad-minded. Some very barsh words were expressed on the Floor of Congress and in committee meetings on that aspect. It took some considerable assurance from various sources to satisfy many members of Congress on this score. Senator Clark in addressing the Senate on July 1, 1943 (89 Congressional Record pages 6908-6912) made the point that the Senate had been specifically told that certain fears concerning the possible interpretation of the Transportation Act by the Commission were unjustified. At one point he said:

"We charged then that what has happened would happen; that the Interstate Commerce Commission, a railroad-minded body, would deliberately start out to destroy all efforts at water transportation. The senate saw fit to believe protestations which were made against any possibility of such an occurrence, but what we predicted has unfortunately and lamentably come to pass."

Senator Wheeler quite wrathfully pointed out that the Commission had made runngs "both contrary to the construction which I have placed on the law and the construction which I told the Senate would be placed on the law". He went on to say that the Congress had been of the belief that the Commission would fix rates and do other things in a way that took into account "the inherent advantages of the different forms of transportation". He then made a most startling assertion:

"There is a concerted effort now being made to permit railroads to get into the truck and bus business. When Congress reconvenes after the recessed intend to introduce proposed legislation to prevent railroads from owning busses and trucks. I think the railroad business should be divorced from the bus and truck business. I think the railroad

should not be in the water transportation business, and I think they should not own air transportation facilities. I know the idea exists in the minds of many persons in this country that all forms of transportation should be owned by one group. If that ever happens we will have no competition in transportation in the United States."

Senator Wheeler was and still is Chairman of the Senate Committee on Interstate and Foreign Commerce. His remarks concerning the purpose and intent of Congress in enacting the legislation ought to be given great weight by this Court. When coupled with the other things we have cited it should be apparent that the interpretation placed on the Act in our case is wholly contrary to the intent of Congress.

There is yet another portion of the Act which makes it clear that the Congress intended to keep railroads out of the motor carrier field — at least to not favor them with a special interpretation of the statute. In Section 202(c) the Act specifically exempts certain terminal area motor carrier operations of railroads from the operations of the statute. This Section expressly provides that:

"the provisions of this part shall not apply -

- "(1) to transportation by motor vehicle by a carrier by railroad subject to part I or by a water carrier subject to part III, incidental to transportation subject to such parts, in the performance within terminal areas of transfer, collection or delivery services; but such transportation shall be considered to be and shall be regulated as transportation subject to part I when performed by such carrier by railroad and transportation subject to part III when performed by such water carrier.
- 2(2) to transportation by motor vehicle by any person (whether as agent or under a contractual arrangement) for a common carrier by railroad subject to part I, an express company subject to part I, motor carrier subject to this part, or a water carrier

subject to part III, in the performance within terminal areas of transfer, collection or delivery services; but such transportation shall be performed by such carrier or express company as part of, and shall be regulated in the same manner as, the transportation by railroad, express, motor vehicle, or water to which such services are incidental."

From the standpoint of statutory construction, it is significant that the Congress has expressly singled out these specific motor carrier operations by a railroad. It should be noted that the Congress has expressly said that such exempt operations shall be "regulated as transportation subject to part I". It is equally significant that the Congress declared:

"such transportation shall be considered to be performed by such carrier as part of, and shall be regulated in the same manner as, the transportation by railroad."

This is a clear indication that all other motor carrier operations of a railroad shall be subject exclusively to the terms of the Motor Carrier Act. It is an express declaration, that all other motor carrier operations by or for a railroad shall be in the same category as those carried on by anyone else. It indicates the Congressional intent to insure the regulation of motor carriers without reference to any other form of transportation.

In determining whether the public convenience and necessity requires the institution of a new motor carrier service, the Commission is not empowered to take into account rail, water or air service. It was emphasized before the Committees of Congress that the issues in motor carrier cases would not be determined on the basis of whether the railroad service was sufficient for the public need. As Mr. Eastman pointed out, motor carriers were apprehensive on that score and, therefore, saw to it that a separate statute covered the Commission power in this field.

In our case everything the Commission recites in its order in presumed justification for the grant has to do with railroad service. Instead of determining whether there is adequate motor carrier service available, the Commission is trying to establish that the Pennsylvania Railroad service as such is not satisfactory to the railroad. With that as the basic fact upon which everything else turns, the Commission then argues that this automatically entitles the railroad subsidiary to a motor carrier certificate.

Let us put this another way. In ordinary cases the Commission has consistently held that it must be shown. that there is no reasonably adequate motor carrier service available, if the applicant is to prevail. In our case the Commission has devoted its time to discovering whether the railroad service is satisfactory to the railroad. They do no' specifically find that present railroad service is poor. They only infer that the proposed motor carrier operation will be an improvement. This amounts to saving that a subsidiary of a railroad may obtain a motor carrier certificate by claiming that the rail service of its owner is not completely satisfactory to the railroad. It amounts to substituting rail convenience for public convenience. It applies a test that would not even be proper. in a case under Part I in which a railroad is seeking a. certificate to construct a new rail line.

We do not know of a single case in the books in which the Commission has held that a motor carrier application must be denied because there is adequate rail, air or water service available. On the contrary, the Commission has repeatedly held that the public is entitled to its choice of service. The Commission has said that the existence of rail service is not a factor in motor carrier cases. How then can it be said that because a railroad believer that motor carrier service will be superior to its rail service, its subsidiary is automatically entitled to a certificate?

Genesis, Development and Basis of Doctrine Governing Decision

We shall demonstrate that the Commission has correctly interpreted and applied the statutory language in literally thousands of ordinary motor carrier cases. It has

consistently held that there cannot be a "public necessity" established for a new line if adequate service is available. There can be no need for a new carrier if the public can obtain all necessary service from existing carriers. It so interpreted the same language in Part I dealing with railroads. State Commissions and Courts have given that same meaning to the same or similar language in state statutes.

In our case, the Commission claims it is applying that doctrine. The three crucial paragraphs on which the order turns has several sentences which indicate a complete Commission recognition of the necessity of a showing by the applicant that existing motor carrier service is inadequate. These sentences will be analyzed in detail in subsequent pages of this brief. (See pp. 84-97).

In its argument before the Lower Court, the Commission claimed that the ability of existing carriers to furnish the service had been considered. It said:

"It should be pointed out that the Commission did not ignore the existence of plaintiff motor carriers or their ability and willingness to provide the service."

In its brief here it now says it gave consideration to the "comparative advantages" of using the applicant or the independent carriers (13). It now argues that existing service can be ignored because it has determined in prior eases that the proposed service is "different". It argues that this "difference" alters the tests — that anyway this "difference" makes it impossible for us to furnish the service.

The Commission is convinced in advance that all railroads should be permitted to operate their own trucklines. It refuses to concede that a truckline not owned by a railroad can ever furnish adequate service as a connecting line carrier with a railroad. The Government in its brief below in the companion case to this one has phrased

^{*}American Trucking Associations, Inc. v. U. S. of America and Interstate Commerce Commission.

it in this, language:

"In other words, whenever and wherever the railroad discontinues its rail service, the Commission recognizes the 'need of substituting truck service' and will authorize it as being required by 'public convenience and necessity'. In adopting a rule such as this, the Commission undoubtedly misapplied the standards prescribed by statute, and fell into a patent mistake of law."

Initially, when considering applications filed by railroads of their subsidiaries, the Commission justified the grant of a certificate by claiming that there was something "different" or "special" about common motor carrier operations when performed between railroad stations. It argued that they were not the same as operations between the stations or docks of other persons. The Commission invented some mysterious language about "coordinated" service. It spoke of "close cooperation" between rail and motor operations and called the result a "rail-truck" service. But at the same time, it emphatically stated that if the motor carrier service proposed by the railroad was not the continuation of a railroad journey, it was not "special" or "different". Accordingly, it imposed a limitation in the certificates which it expressly said was designed to restrict these railroad motor carrier operations to only such as were definitely in this claimed special class. This restriction required a prior or subsequent rail movement.

In tracing the development from that initial step, we shall show that in a short time the Commission ceased to recognize any difference between this so-called special service and any other motor carrier service the rails might wish to furnish. Eventually it decided that the performance of any motor carrier service by a railroad made that service "different" from that same service when performed by non-rail owned motor carriers. It continued to instify the grant of certificates by calling the service "special" and "different" but it now took the position that whenever a railroad was the applicant the service just naturally must be different for that reason alone —

that the identity of the applicant proved the service "different" and hence justified the grant of a certificate. This resulted in striking out the limitation in the certificate which had restricted the rail-owned motor carrier operations to those where a prior or subsequent rail movement was involved. The Commission let down all bars and now permits the rails to engage in unrestricted motor carrier operations.

The leading case on the subject is Kansas City Southern Transport Company, Incorporated, Common Carrier Application 10 M.C.C. 221. In this leading case the Commission recognizes the necessity of a showing by applicant that the existing service is inadequate.

The railroad owner of the applicant in that case sought a common motor carrier certificate that would permit duplication of its rail line. As in our case, it claimed that it would transport less-than-carload merchand'se over its rails to some self selected point where it proposed to transfer it to its truck line for completion of the delivery. It called this "coordinated rail-truck service". But, in addition, it also proposed, exactly as in our case, to have the motor carrier pick up freight at the docks of shippers at points along its rail line and perform all the service by motor track.

It should be obvious that the fact that the motor carrier would pick up at a rail dock in one instance, and at the shipper's dock in the other, and would deliver the freight directly to the dock of the consignee, is a distinction without a difference. There is no "close coordination" between trucks and rails in such case. But in this first important case the Commission starts the process of misapplying the statute by arguing that there is a difference in the two situations — that where there is no prior or subsequent rail movement, the service is precisely the same as that of existing carriers but that where such prior or subsequent rail handling is involved there is a fundamental difference.

It is upon that argument and that argument alone that this leading case turns. Proof that this is the key to their decision will be found in the statement:

"However, while it has been shown that public convenience and necessity require the establishment of a service by applicant which will be coordinated with that of the railway, the record is devoid of proof that there is any need for the institution of service by applicant which is not required in such coordinated operations. In other words, there are plenty of motor carriers in this territory and it has not been shown that there is any need whatever for another motor carrier to furnish service such as the existing carriers furnish and having no close relation to rail operations" (238).

The Commission agrees that the order must stand or fall on its assumption that the furnishing of "coordinated rail-truck service" is something special and not at all like the service of ordinary motor carriers. Further, proof of this is found in the purpose and nature of the restriction which the Commission imposed in the order. The Commission said:

"We now come to the question of what restrictions shall be imposed in the authority to be granted so as to limit applicant's operations to those auxiliary to, or supplemental of, rail service and to prevent it from engaging in operations which will duplicate and compete with service now adequately provided by carriers by motor vehicle" (238).

The Commission imposed the condition discussed in the following language:

"Shipments transported by applicant shall be limited to those which it receives from or delivers to either one of the railways under a through bill of lading covering, in addition to movements by applicant, a prior or subsequent movement by rail" (241).

It justified the grant of a new certificate thus limited by arguing:

"The railway is now furnishing a less-than-carload, or merchandise, freight service which is expensive and in many respects unsatisfactory and inefficient. Through applicant, if the certificate sought be obtained, it proposes to use motor vehicles in coordination with its rail operations in such a way that a merchandise service can be provided that will be much less expensive and at the same time more expeditious and more convenient and generally satisfactory to the public served. That these results can be achieved, the record leaves no doubt. Moreover, it is clear that the coordinated rail-motor service will be a new form of service, utilizing both forms of transportation to advantage, and differing from the service given by the railway alone or by competing motor carriers alone."

"Is it necessary, however, that applicant be given the desired certificate in order to accomplish this purpose, or can it be 'served as well by existing lines or carriers' "! (235).

It reviews protestant's contentions:

"These motor carriers are protestants and they contend that whatever coordination of rail and motor carrier service may be desirable can be accomplished by the railway through arrangements with them and utilization of their facilities, or, at all events, that this method of attaining the result sought should be tried before applicant is permitted to establish a new service" (235).

Now note the things the Commission advances as a refutation of the protestant's arguments:

"The railway regards any such plan of coordination with independent motor carriers as impracticable.

It goes so far, indeed, as to suggest that if it contemplated retirement from the handling of merchan-

dise traffic it could do so more gracefully and at less expense than by entering into joint arrangements with parallel competing truck lines, from which the rallway is convinced 'it could reasonably expect to bona fide coordination or cooperation'" (235).

This discrimination in favor of the rai, ad is further shown by the next paragraph:

"We are without jurisdiction to compel coordinated service between carriers by rail and earriers by motor vehicle. It could only be accomplished through the medium of through routes and joint rates and we have no power to require their establishment. It follows that any such plan must be dependent on voluntary cooperation" (235-6).

This clearly expresses the idea that the railroad wishes and desires must govern. It overlooks the obligits fact that coordination and cooperation are made impossible only because of the stubborn attitude of the railroad.

In this decision the Commission admits that under all ordinary circumstances existing motor carriers should furnish the service. It admits that where existing carriers can furnish the service, public convenience and necessity cannot possibly require the addition of a new line. But it claims that where merchandise is to be transferred from one form of transportation to another, a different situation exists.

It is extremely important to note that the only thing in the order that bears on the claim that this motor carrier service is something "different" is the fact that the operation will be between points served by the railroad. Freight will simply move to a railroad chosen point by rail and be transferred to a truck. Rail rates and forms will be used. That is all that furnishes any bases for saving that the service is "different". When the freight does not move by rail it will move by truck. The phrases "substituted service" and "coordinated rail-truck service" mean no more than that. In the proceeding which authorized the use of rail tariffs in this type of opera-

tion, the Commission agrees with our contention that this is simply a joint line service:

'In either event, where the substituted service consists of a combination of line-haul movements by rail and motor, it is in legal effect a joint service, no matter by what other name it may be designated."

Substituted Freight Service 232 I.C.C. 688.

The evidence reviewed earlier shows that the Commission is wholly in error in its conclusion that this so-called "coordinated" service differs from that of all other common motor carrier service. Even if it did differ, the evidence in our case will not support the arguments the Commission has used in reaching its conclusion. At the moment, however, we want to again stress the point that the Commission is agreeing with us that the public convenience and necessity does not require a new operation if existing carriers can furnish the service. This leading case turns on the Commission's contention that because of the claimed special nature of the service, existing carriers cannot furnish it.

The case was then reopened and the restriction removed. In so doing it said:

"The purpose of the conditions imposed was to limit the motor-carrier service to that which is auxiliary to, or supplemental of, the rail service and to prevent applicants from engaging in motor-carrier operations unconnected with any rail service."

Kansas City S. Transport Co., Inc. 28 M.C.C. 7.

The Commission accepts the argument of the railroad that condition 3 should be eliminated:

"because it prevents them from providing an economical, efficient, and adequate coordinated rail-andmotor service and results in the continued use of both way-freight trains and trucks, lightly loaded, between various points, and because the performance of all-motor service between certain points is a necessary and integral part of the plan of coordinated operations" (7):

After repeating the same arguments reviewed above, the Commission says:

"Under condition 3, truck service may be used between such stations in connection with a prior or subsequent movement by rail, but not otherwise, notwithstanding that the truck service could readily accommodate all the traffic. Manifestly, this seriously limits the benefits in economy and efficiency of service which the substitution of trucks is intended to produce" (9-10).

Now note the way the Commission summarizes factors which impelled the imposition of condition 3 in the prior order:

"As the above quotations indicate, the thought of division 5 in regard to this matter was that public convenience and necessity required a coordinated rail-and-truck service, which, upon the records of the cases before it, could only be furnished efficiently and effectively by conducting the two forms of transportation under a single control, but that there was adequate independent motor-carrier service between all stations, generally speaking, so that public convenience and necessity did not require the institution between the stations of new motor-carrier service under railroad control which is not coordinated with prior or subsequent rail service. Hence condition 3." (10).

The Commission then disposed of that reasoning in the following language:

"Upon further consideration, we are of the opinion that the division gave insufficient weight to the fact that the railroad, as well as the independent motor carriers, has been and is furnishing service between the stations, but that between many of them the present means of railroad service, the way-freight train,

is uneconomical and inefficient. This is the reason for coordinating truck service with rail service, and, as we have found (and as division 5 also found), public convenience and necessity require the increased economy and efficiency which will result from such substituted use of trucks. By the same reasoning, however, public convenience and necessity require the substitution of trucks for way freight train service regardless of whether there is a prior or subsequent movement by rail. Such substitution is a part of the plan of coordination, and unless it can be accomplished, the full benefits in increased economy and efficiency which the public interest demands cannot be secured!' (10).

All this means is that the railroad wants the additional volume it can obtain if it can furnish ordinary motor carrier service. This argument reveals the fallacy in all their reasoning. They speak of the economy and increased efficiency that "will result from such substituted use of trucks", yet grant a right that is not restricted to such alleged "substituted" service. It now considers any service for a railroad to be "substituted" service. When it says that this "substituted" service is needed whether there is a prior or subsequent rail move, it is only agreeing that ordinary service should be permitted simply because the railroad wants the additional revenue it can pick up. This has not relation to whether or not there is a real need. Proof that this is really the ground for the decision is found in the following:

"One competitive carrier has no vested right in the continuation by another of an inefficient method of operation, and we believe it to be neither the policy of Congress nor the proper function of this Commission to retard any form of progress in transportation which will serve the public interest!' (10).

At another point the Commission says that it does not believe that the development of the "coordinated" service will seriously endanger existing carriers but: "in any event, the public ought not to be deprived of the benefit of an improved service merely because it might divert some traffic from other carriers" (8).

The most conclusive evidence that it is only the needs and desires of the railroads which governs is found in that part of the order where the Commission is developing a basis for the "key-point" restriction. The Commission points out that:

"The traffic under consideration, which is chiefly so-called package or merchandise freight in less-than-carload quantities, is, of course, traffic which the railroads are and have been under an obligation to transport and which they will continue to transport whether we grant or deny the applications" (9).

The Commission points out, however, that where the railroad intends to continue its through train service without alteration, there is no need for truck service. It says:

"So far as such traffic can be moved in well-loaded cars on through trains which serve only the larger points, it can be handled efficiently by rail, and the railroads have no need to substitute truck service for such rail service" (9).

The Attorney General, in briefing the companion case below, has so, well phrased his arguments against the Commission's contentions, we make them our own. In discussing the basis for the "key-point" theory as an abstract proposition, the Government said:

"It seems clear that the entire 'key-point' theory is based directly upon the operating convenience of the railroad, and that the Commission is selecting as key points those which may from time to time be indicated as suitable by the operating practices of the

^{*}American Trucking Associations, Inc. et al v. United States of America and I. C. C.

railroad. The Commission seems to take the view that public convenience and necessity requires anything which is beneficial or advantageous to the railroad."

The Commission has thus repudiated the basis for the first Kansas City Southern decision. But, in so doing, it does not directly discard the test of adequacy of existing service. Its reasoning, however, as indicated above, clearly shows that despite its disclaimer it has, in effect, done so

The Commission has first justified its grant of a certificate by arguing that "co-ordinated" rail-truck service is "different". Being "different", it says that it cannot be furnished by existing carriers because the railroad will not use such service and that, therefore, the necessary close co-operation cannot be secured — hence the grant. In the second case, however, the Commission says that unless the railroad can furnish both this "different" co-ordinated service and ordinary service it will be handicapped — therefore, it should not be prevented from furnishing all kinds of motor carrier service. That regardless of existing service the railroad should be permitted to operate freely because otherwise the "special" service will cost the railroad more than it wants to pay.

Accordingly, condition 3 was removed. In so doing the Commission also removed all basis for calling the service special or "different". It removed all ground for saying that there would be no competition with existing carriers. But without noting that the removal of condition 3 and the repudiation of the reasons behind it had made the argument inapplicable, the Commission has continued to cite the language of the original Kansas City Southern decision,

In entire agreement with this position the Government, in seeking to overturn the order in the companion case, phrased it this way:

"It is obvious from the foregoing reasoning that the Commission, in abandoning the prior or subsequent rail haul condition prescribed by Division 5. is abandoning also any justification for authorizing the railroad's truck operations because they constitute an element of a co-ordinated rail and truck service, of a different character from that performed generally either by rail or motor carriers. The substitution of pure motor carrier service, differing from the 'adequate independent motor carrier service' already existing only in its being under railroad control, is obviously not the establishment of a new and different type of service beneficial to the public.

So far as the public is concerned, it will receive from the railroad, acting as a motor carrier, only the same type of all motor service which it would otherwise receive from the independent motor carriers not controlled by the railroad."

In further agreement with our position about this keypoint theory, the Attorney General said:

"It seems plain that the 'restrictions' to be imposed by the Commission, under the quoted language, are based entirely upon what the railroad wishes to do."

"if the railroad wishes to run trains, it does not need to run trucks instead, and consequently 'public convenience and necessity' do not require that the railroad run trucks."

In succeeding cases the Commission has gradually made clear what it has been struggling to say. What the Commission meant was finally set out in unmistakable language in Pacific Motor Trucking Company, 21 M. C. C. 761:

"The points in question are admittedly served by other motor carriers, and protestants on exceptions contend that public convenience and necessity therefore do not require the proposed operation. While adequate motor-carrier service, as such, is no doubt available, we have somewhat consistently refused to

compel rail carriers to make their co-ordinate efforts dependent on competing motor carriers. We have in several instances granted similar authority to other carriers. Illinois Central R: Co., 12 M. C. C. 485, Kansas City S. Transport Co., 10 M. C. C. 221, Seaboard A. L. Ry. Co. 17 M. C. C. 413" (763-4).

In another case the receiver of an abandoned electric interurban railroad was seeking the right to institute new motor carrier operations serving the points between which it had been operating as a railroad. Prior to the issuance of this order the railroad has been authorized by the Commission to abandon all its railroad lines. Because of that fact it was obviously not a case where it could be said that the railroad was "under an obligation" to continue to furnish service. Neither could it be said that the railroad was "merely substituting a more efficient for a less efficient" mode of service. The railroad was going out of business and wanted to start a new type of service under the Motor Carrier Act.

It was shown that fifty truck lines and five bus lines served the routes. The Commission authorized the railroad to cease operations. When the Commission was considering the application to institute motor carrier service, however, it brushed aside all consideration of existing service. It based its grant upon the startling statement that it believed:

"that applicant should be permitted to substitute, motor-carrier services for its present rail service and thereby continue to handle the traffic of shippers it has served for long periods of time."

Indiana Railroad Co. Ext. 27 M. C. C. 178.

There is nothing in the order or in the record to justify the grant of authority except the fact that the railroad was going out of business and the receiver wanted to start a motor carrier service. None of the reasons set out in the

Indiana R. Receiver Abandonment; 240 I. C. C. 359.

Kansas City Southern Cases are applicable. But they were all repeated verbatim. The service would not be in close co-ordination with a railroad, nor would it be in any way different or special.

Commissioner Patterson, in dissenting, has set forth our views so well we quote at some length:

"Numerous common-carrier motor-truck lines operate in direct competition with applicant's railroad. It is because of this competition and a preference of the shipping and traveling public for motor transportation that traffic of the railroad has been reduced to a point where the cost of operations exceeds the revenues. For this reason division 4 in Indiana R. Receiver Abandonment, 240 I. C. C. 359, permitted abandonment of applicant's railroad lines.

Here the majority of division 5 proposes to find that public convenience and necessity require the operation by applicant as a common carrier by motor vehicle over the same routes as traversed by the rail lines and over an additional route. The fact that applicall did and does operate a railroad is not proof that public convenience and necessity require operation by it as a motor carrier. The law requires the same evidence of convenience and necessity from this applicant as from any other. The facts negative such a showing. The existing truck lines must have adequately handled the traffic which the report of division 4 finds was diverted from applicant's railroad to. them because of the public's preference. This being .so, why is another truck line now required? Its establishment can only result, if it is to be successfully operated in a diversion of traffic from existing truck · lines" (179).

In the second Kansas City Southern Case another Commissioner pointed out that the removal of the restriction meant that the railroad was being granted the right to compete with existing adequate service in defiance of a record that proved there was no need for the new carrier.

- Commissioner Lee pointed out that in the first report of the case the Commission found:

> "that there are plenty of authorized motor carriers . in operation throughout the territory in which the Kansas City Southern Transport Company proposes to operate; that, with the possible exception of some small stations, the present facilities for the movement of freight wholly by motor vehicle between the points which it proposes to serve are adequate; that the record fails to establish that there is any need whatever for it to provide a service such as the existing motor carriers are furnishing; and that public convenience and necessity require only the establishment by it of a motor-carrier service which will be auxiliary to, or supplemental of, rail service of its parent railroad company and which will not duplicate motor-carrier service now adequately provided by existing motor carriers" (23).

'The result is that they are granted authority to engage in motor-carrier operations and to furnish motor-carrier service which are not co-ordinated with or in any wise tied into operations or rail service but which, on the contrary, will duplicate the operations and the service provided by existing motor carriers and found to be adequate to fill the public need!' (24).

There then follows some of the strongest and most expressive language we have found in all of the cases:

"The act does not authorize us to grant a certificate or permit, authorizing motor-carrier operations by a railroad or its subsidiary, on any less proof of public need therefor than is required of other applicants for such operating authority. It may be, as stated in the report, that 'one competitive carrier (a motor carrier) has no vested right in the continuation by another (a railroad) of an inefficient method of operation'. Neither does a railroad or its sub-

sidiary have a 'vested right' to inaugurate new motor-carrier operations in competition with existing authorized motor carriers without establishing public convenience and necessity therefor' (24).

Now comes a case in which the Commission has finally taken a position that leaves no room for doubt. In the case of Atlantic Coast Line Railroad Company Extension of Operations — Virginia-North Carolina, 30 M. C. C. 490, the Commission repeated all the earlier arguments and then said:

"Protestants assert that Thurston Motor Lines serve all of the points involved, and it may be as contended, that existing motor carrier service is adequate, but one competitive carrier or class of carriers has no vested right in the continuation by another of an inefficient method of operation. Rather, we believe it to be the policy of Congress and the proper function of this Commission to foster any form of progress in transportation which will serve the public interest" (492).

But now note how differently they view things when the fortunes of another railroad are involved. In one case where it was shown that some of the routes sought would afford service to towns served by another railroad, the Commission denied that part of the application but granted the balance where only motor carriers were serving. It said:

"The grant of such authority would result in service directly competitive with rail operations of the parent company as well as service of other rail and motor carriers in the territory."

Gulf, M. & R. Co. Common Carrier Application, 18 M. C. C. 728.

The Commission then concluded that, while the rest would be granted, the routes:

"not on the rail line and are not required in the coordinated service, will also be denied." These cases mean that if a railroad owned applicant refuses to deal with ordinary motor carriers, it is entitled to a certificate because "in the opinion" of the Commission, there is no conceivable set of facts that could persuade the Commission that an independent motor carrier could furnish the service.

The railroad how argues that the commission has established a rule that will always prevent an independent carrier from furnishing the service. They now say that these prior cases have established such carriers cannot furnish the service satisfactorily because it:

"would depend on their voluntary co-operation and would therefore be likely to be lacking in important elements of co-ordination, with the probable impairment rather than improvement of the railroad's service" (50).

Now obviously this is a rule of law. If this is a reason why independent carriers cannot furnish the service, it is a conclusive one that bars all consideration from the outset — a rule that automatically guarantees no opposition and a favorable order for the rail owned applicant.

The Commission talks only in terms of the so-called "co-ordinated" rail-truck service, yet grants the applicant the right to furnish ordinary motor carrier service. It recognized, in the second Kansas City Southern Case, that such was the result of the removal of condition 3, yet in all-these subsequent cases it ignores that plain fact. All its argument is devoted to an attempt to justify the grant of a certificate authorizing the so-called "co-ordinated" service although the certificate contains no such limitation.

The argument about the service being "different" is therefore not on the point unless they mean that the furnishing of any service for a railroad is "different". But if that is the contention, then all this argument about this "difference" making consideration of existing service unnecessary, is only another way of saying that the case is decided before trial. It set up no test—the inherent dif-

ference in speed is an ever-present thing which decides all the cases upon application.

These cases have not been decided on the basis of the evidence presented in each case, but rather on a preconceived and firmly fixed belief that independent motor carriers should not perform the service and that the railroad should not be compelled to use them. The tell-tale sentence that explains every one of these decisions is that cited from Pacific Trucking Company, supra:

"While adequate motor-carrier service as such is no doubt available, we have somewhat consistently refused to compel rail carriers to make their coordinate efforts depend on competing motor carriers."

Interpretations Applied By Commission in Other Types Of Cases

Implicit in the statute and in the decisions is the requirement that an applicant must show that the proposed service "will be required" by the (1) public convenience and (2) public necessity. This is the same meaning given the same language in the Rail Act as set out in Public Convenience Applications of A. & S. A. B. Ry., 71 I. C. C. 784. Proof of one of those elements is not treated as proof of the other. In early motor carrier cases (1937) the Commission said:

"There is no showing that there is a substantial public demand for applicant's services or that the existing transportation facilities are indequate to efficiently serve the needs of the public. The evidence does not disclose that applicant proposes to institute a service of such character that it cannot be supplied or performed by carriers who may have established rights in the considered territory. Obviously the considered operations are for the convenience of applicant rather than for the convenience of the public."

Rolfsmeyer Common Carrier Application, 1 M.

"There is no showing in this record that there is any need or demand for this proposed operation or that existing transportation facilities in this territory are inadequate, inefficient, or otherwise deficient. In C. & D. Oil Co. Contract Carrier Application, 1 M. C. C. 329; it was found that existing motor carriers should normally have the right to transport all traffic that they can handle adequately, efficiently, and economically in the territories they serve without the added competition of a new operation."

Louis J. Marini Common Carrier Application; 2 M. C. C. 728.

In another case the Commission disposed of a common carrier application by saying:

"Applicant had no knowledge of the number of truck operators in and around Hagerstown and Williamsport. There is no showing of record that existing transportation facilities in the territory proposed to be served by applicant are inadequate or that there is any real need for his services."

Monninger Common Carrier Application, 2 M. C. C. 504.

In another case the Commission found that an applicant seeking to establish a new service between Chicago and Detroit was attempting to invade a territory served by a great many existing lines. After commenting on the fact that the applicant had been operating and had secured some traffic, it pointed out:

"No claim is made that adequate facilities for transportation are not now available in the particular territory involved. Preference of a shipper for the service of a certain operator does not establish the need for such service on the part of the shipping public to be served, as required to be shown by the provisions of the act."

Merrill & Hamel, Inc., Common Carrier Application, 8 M. C. C. 117. Those early cases have since been followed by some other decisions that repeat and strengthen this interpretation. In a case involving another subsidiary of the Pennsylvania Railroad, we find a situation almost exactly parallel with that in this case. The Division at one point said:

"The purpose of this extension is to enable applicant to perform substituted service for the railroad in the handling of less than carload shipments between Dayton and Middletown, moving at rail rates and on rail billing and involving, in addition to movement by motor vehicle by applicant, a prior or subsequent movement by rail."

Pennsylvania Truck Lines, Inc., Extension — Middletown, Ohio, 34 M. C. C. 828.

The order points out that the Joint Board had recommended issuance of a certificate with conditions:

"limiting the service to that which is auxiliary to or supplemental of the rail service of the railroad, but not limited to the handling of shipments having a prior or subsequent movement by rail."

In reviewing the evidence, the division then went on to

"Several shipper witnesses testified to a need for, resumption of the service and it is clear that a public need exists for the performance of a substituted less than car load rail service between Dayton and Middletown."

The facts in our case do not reveal any public need for the proposed service. The division in that case reached a proper conclusion when it said:

"Conceding this public need, the controlling question is whether or not there is already available a motor carrier ready, able and willing satisfactorily to supply such service for the railroad. If so, there is no need for applicant's added service in this respect." The division then points out that the existing motor carriers could perform the service in question. In the last paragraph of its discussion the division said:

"There is no showing such as we have had in some cases, that the railroad would experience any difficulty whatever in co-ordinating its service with that of Continental. The past satisfactory performance by Continental of the identical service definitely negatives any such claim."

Precisely the same situation prevails in our case. We demonstrated that we were satisfactorily performing this allegedly "special" service for the Pere Marquette Railroad in the same general Michigan area. The order so finds. No effort was made to contradict our evidence on this point. Does not such testimony and finding negative any claim that the railroad would "experience any difficulty in co-ordinating service" with that of these protestants? While no such finding is made in our case, it is one unexpressed reason in the Commission's mind. Does our evidence not prove that existing service is adequate for this proposed service? Does it not prove then that regardless of whether the service is "special" or "different", it is readily obtainable from existing carriers? And does that not dispose of the whole argument based on that alleged "difference"? How can it be claimed that we cannot furnish the service "as well as" the applicant on such a record?

In line with our contentions, the Commission held in another ordinary motor carrier case that the applicant has the burden of showing that the existing service is not adequate. The Commission there said:

"Where a certificate is sought in the transportation of commodities generally and to serve a public already served by railroad, express and motor carrier, the burden of proof is upon applicant to show that the latter are not rendering a type or character of service which satisfies the public need and convenience and that the proposed service would tend to correct or substantially to improve that condition."

Norton Common Carrier Application, 1 M. C. C. 114.

In yet another earlier case, the Commission said substantially the same thing:

"The fact that in isolated cases the present operating bus line was unable to carry passengers on scheduled trips is not a sufficient basis to justify the Commission in granting a certificate of public convenience and necessity to another bus line, unless it be shown that the present bus line, railroads and steamship facilities are inadequate and inconvenient to the traveling public, and that the proposed facility would eliminate such inadequacy and inconvenience."

Bluenose Bus Co. Common Carrier Appl., 1 M. C. C. 173.

In another case the Commission was equally explicit in its holding that an application could not be granted unless the inadequacy of existing service was shown:

"Aside from a willingness and ability to engage in the operation of motor vehicles as a common carrier, under the provisions of the act, there must be an affirmative showing that the service is not only required in the convenience of the public proposed to be served, but that it is a necessity on the part of such public. The latter element includes a showing that the present facilities are inadequate for the transportation of the described commodities between the points involved."

Geo. Edmind Jackson, Common Carrier Appl., 1 Federal Carriers Cases 205;

In yet another case we find an especially strong statement of the general rule:

"The substantial question here is whether the evidence establishes that continuance of applicants'

service is required by the public convenience and necessity. We are of the opinion and find that it does not. The present bus and rail service of protestants described above appears to be adequate for all purposes. Those carriers have been rendering service in the territory for some time, and, in the absence of any evidence that their service is unsatisfactory or deficient in any respect, or that applicants' service is required by the transportation needs of the public residing in the territory served, we are not convinced that there are sufficient grounds for permitting applicants to continue their present operations."

White Circle Line Common Carrier Application, 1 M. C. C. 585.

Literally hundreds of cases can be cited to this same. effect. We find none contrary. The Commission has admitted that this is true.

Adequacy of Rail Service Not Considered In Ordinary Motor Carrier Cases

Now compare those findings with the statements made in the following cases. In these additional cases the railroads were seeking to defeat a motor carrier applicant by showing that there was sufficient rail service. In other words, they were attempting to have the Commission decide a motor carrier case by taking into consideration the existing railroad service. In one leading case the Commission discusses at some length the contention on the part of the rail protestant that if satisfactory rail service exists, a motor carrier applicant should be denied. The Commission said:

"They contend that the public convenience and necessity do not require the proposed services and that the grant of a certificate to applicant would be inconsistent with the policy of Congress declared in section 202(a) of the act. One of the bases for this contention is that all of the origins and all of the destinations, except Elkhorn, now have adequate service.

by rail. We are advised by statute that it is the policy of Congress to foster and preserve in full vigor both rail and water transportation but we are also directed in section 202(a) to regulate transportation by motor carriers in such manner as to recognize and preserve its inherent advantages * * * That a particular point has adequate rail service is not a sufficient reason for denial of a certificate; shippers and consignees of petroleum products are entitled to adequate service by motor vehicle as well as by rail."

Bowles Common Carrier Application, 1 M. C. C. 591.

In another case in which no motor carrier opposed the application, the railroads made the same contention. The Commission said:

"Protestant railroads offered evidence that existing rail service is adequate and no reason appears for a contrary conclusion with respect to that form of transportation. We have frequently said, however, that shippers are also entitled to adequate motorcarrier service."

Johnson Compton Carrier Application, 10 M. C.

These typical cases demonstrate that the Commission has correctly construed the Act to mean that a common motor carrier application is to be decided with reference to conditions in the motor carrier field only. It clearly indicates that neither the Policy Section nor the Convenience and Necessity Section will permit the Commission to take into account evidence concerning railroad facilities. These cases are squarely contrary to the basic consideration which impelled the Commission to its decision in our case.

Commission's Interpretation of Same Statutory Language In Railroad Extension Cases

The language in Sec. 207 of the Motor Carrier Act is the same as that in the Railroad Act governing the issuance

of certificates of convenience and necessity. The Commission has held this same language to mean precisely what we claim. In an early case under the Railroad Act the Commission has quite plainly agreed with our interpretation of the language. In that case the Commission, in defining the meaning of the phrase "public convenience and necessity", said:

"While one of the purposes of the Transportation Act of 1920 was to preserve competition between carriers; the provisions of paragraphs (18) to (20), inclusive, of section 1, negative any presumption that it was the purpose of Congress to permit the construction of new and competitive lines of railroads where existing facilities are adequate or can be made so by the exercise of available administrative remedies."

Public Convenience Application of Utah Terminal Ry., 72 I. C. C. 94.

In yet another case the Commission had this to say:

"The record does not indicate any urgent need or at present any great public convenience to be served, to justify at this time the construction of the proposed line of railroad. Del Rio & Eagle Pass and the districts surrounding those municipalities are served by the Southern Pacific and the service is generally satisfactory."

Del Rio & N. Ry. Co. Proposed Construction, 187 I. C. C. 244.

In defining the phrase "public convenience and necessity" the Commission has said that it implied:

"both convenience and necessity since the words are not synonymous but must be given a separate and distinct meaning. 'Necessity does not exist unless the inconvenience would be so great as to amount to an unreasonable burden on the community'. " The words imply an urgent, immediate public need."

Public Convenience Application of A. & S. A. B. /Ry., 71 I. C. C. 784.

In another interesting case involving opposition by the Pennsylvania Railroad to the construction of a new railroad, the Commission held that an applicant seeking permission to construct a new railroad has the burden of showing that the territory does not have adequate railroad transportation. The Commission said at one point:

"The intervening railroad companies point out that their lines or portions of them parallel to some extent the proposed line or railroad or serve a part of the same territory, providing almost an overabundance of railroad transportation, and that the territory involved is completely and adequately served by them."

"Upon the record the applicant has failed to show that the territory is now deprived of adequate railroad transportation or that there is a public need for the line proposed."

Ray Greene Proposed Construction, 228 I. C. C. 792-3-4.

In another case the Commission, in denying a railroad application to construct a new railroad line, said:

"As hereinbefore noted the territory appears well provided with sufficient and adequate service by existing railroads."

Elizabeth Southern Ry. Proposed Construction, 166 I. C. C. 114.

In another case the Commission pointed out that evidence of an improvement in service the applicant proposed did not warrant the grant of the certificate:

"The new road would doubtless be of service to stock raisers and dealers in furnishing quicker transportation to and from ranges. "As compared with present service via the Southern Pacific it would furnish quicker passenger service and save time on express, perishables and other freight in-

bound and outbound between Westwood and California points."

Proposed Construction by Northern California R. Co., 154 I. C. C. 410.

At another point in this same order the Commission said:

"No new territory would be opened that could not be served by existing carriers."

The Commission went even farther than this in another railroad case. It admitted that the record at least partially upheld the applicant's contention that existing service was not adequate but said:

"There is assurance that future service will be adequate."

Proposed Construction of Line by Perry & Southeastern Ry., 124 I. C. C. 346.

In yet another case the Commission indicated its unwillingness to grant a new railroad certificate if there was any possibility of the existing lines meeting the public need. The Commission said:

"Authority to construct the proposed new line will not be granted until we are fully satisfied that a use of the existing rail routes between the Olio River and the Youngstown district which will produce substantially the results proposed by the applicant is impracticable."

Construction of Branches by Pittsburg L. & W. R. Co., 150 U. S. 55.

In yet another case in which counsel for the plaintiff participated as attorney for the Michigan Public Serice Commission, we find the Pennsylvania Railroad actively interested. That railroad wanted to serve a cement mill located at Petoskey, Michigan. It was denied because other railroads were in a position to and could furnish

the desired service. The interesting part is a statement by Commissioner Eastman who dissented:

"I am not in sympathy with the idea that a carrier can have anything resembling a proprietary interest in traffic or that there is any traffic here for example which 'belongs' to the Pere Marquette or that can properly be spoken of as 'its' traffic."

Proposed Construction by G. R. & I. Ry. Co., 145 I. C. C. 564.

The Pennsylvania Railroad is certainly contending that the traffic in our case. "belongs" to it and that such traffic is "its" traffic.

It would indeed be odd if the Pennsylvania Railroad having been denied the right to extend its railroad tracks to serve that industry in Petoskey, should now achieve the same end through the grant of the certificate in this case. As this authority stands that railroad will be enabled to serve the industry involved in that prior case. It is, therefore, possible that railroads generally can thus circumvent the denials of railroad extensions by asking for substantially the same thing through a motor carrier application.

These cases are typical of the many hundreds of railroad cases where this statutory language has been interpreted in the same way. The Commission has consistently held from the beginning that an applicant, for permission to construct a new railroad line, cannot establish that it is "required by the public convenience and necessity", if there is adequate available railroad facilities.

Public Interest Is Not Proper Test

The appellants have adopted the position taken by the Commission when they argue that if the Commission believes the grant of this authority is in the 'public interest', that opinion will prove that public convenience and necessity requires the grant.

In a case where the question was squarely raised as to whether the term "public interest" was synonymous with the term "public convenience and necessity", the Commission sets out that the protestants had claime is

"That public interest is in contemplat on of the act synonymous with public convenience and necessity; that the latter term means, in substance, a strong, argent, public need; and that without such evidence the application must be denied. In our view these contentions are unsound".

James A. Sproul Contract Application 1 M.C.C. 467.

In a case entitled St. Andrews Bay Transportation Co., Extension of Operations, 3 M.C.C. 711, the Commission has pointed out that there is a vital difference between the finance section requirement that the transaction be in the "public interest" and the test prescribed in the public convenience and necessity section. The Commission has, therefore, definitely recognized the difference in the tests, yet, in all of these railroad cases, it has at least implied that it considers the test of "public interest" the governing one. The error is repeated in Appellant's Briefs.

Our order does not make use of this phrase. This idea is indicated in the Kansas City Southern case, however, and in other cases where the Commission has repeatedly said that:

"There is no question that the proposed rail-truck co-ordinated service is in the public interest."

This was set out in Pacific Motor Trucking Company, 21 M. C. C. 761; Texas and Pacific Motor Transport Co.. 30 M. C. C. 467; Atlantic Coast Line Railroad Company extension of operations, 30 M. C. C. 492; C. & N. W. Railway Company Extension of Operations, 31 M. C. C. 457; Texas and Pacific Motor Transport Co., Extension of Operations, 33 M. C. C. 38.

The contract carrier section of the act authorizes issuance of a permit only if it appears that the proposed operation:

"will be consistent with the public interest and the national transportation policy declared in this Act."

Contrast this with the section which authorizes issuance of a common motor carrier certificate only when it is found that the proposed service:

"is or will be required by the present or future public convenience and necessity."

If Congress had intended establishing the same tests for both classes of carriers, it would have used the same language. But we will find many other places in the Act where the test is the "public interest". Old Section 13 of the Act has been dropped and Section 5 of Part I now deals with finance matters. That section, in authorizing consolidations, requires the Commission to find that the proposed transaction "will be consistent with the public interest."

At another point in the section the Congress has said that the Commission cannot approve purchases by railroads:

"unless it finds that the transaction proposed will be consistent with the public interest and will enable such carrier to use service by motor vehicle to public advantage in its operations and will not unduly restrain competition."

We call attention to the similarity of that finance section language and what the Commission has said at one point in our order:

"Furthermore, it does not appear that the restricted service would be directly competitive or unduly prejudicial to the operations of any other motor carrier (we) are of the opinion that the proposed co-ordinated service will serve a useful public purpose."

A number of succeeding subsections of Section 5 of Part I make use of the phrase "public interest". In Section 210 where the Congress has treated the subject of dual operations, we find a prohibition against a single person owning both a common carrier certificate and a contract carrier permit at the same time unless the Commission:

"shall find, or shall have found, that both a certificate and permit may be so held consistently with the public interest and with the national transportation policy declared in this Act."

The same language is set out in Section 211 dealing with the issuance of brokerage licenses. In Part III of the Act regulating water carriers, the same test is prescribed in defining the Commission's power and authority over rates. Section 309 of Part III deals with common carrier certificates and prescribes the same test of public convenience and necessity we find in the motor carrier sections. In dealing with the issuance of a contract carrier permit to a water carrier, the Congress has required the Commission to find:

"That such operation will be consistent with the public interest and the national transportation policy declared in this Act."

The confusion of the terms "public interest" and "public convenience and necessity" has, in part, caused the errors in all these cases. This confused thinking has led the Commission to believe that whatever, in its opinion, is in the "public interest" is "required by the public convenience and necessity". While something that has been shown to be "required by the public convenience and necessity" may be in the public interest, the converse is not necessarily true. A terrier may be a dog but all dogsare not terriers. The same facts may, in a given case, establish that a new line is in the "public interest" and also that it is "required by the public convenience and necessity", but that coincidence does not prove that the legal meaning of the two terms is the same. Congress did not make use of them in the same way. Ordinary rules of interpretation prohibit such a construction.

State Court and Commission Decisions

There are a considerable number of State Supreme Court decisions on this question. While it is, of course, true that all state statutes are not precisely the same, the use of the term "public convenience and necessity" has been quite common. The meaning of the term has been determined to be precisely what we have contended for in this case. In substance, the state courts have held repeatedly that an applicant must show either an absence of motor carrier service or that such service is inadequate.

While the issue in our case has never been presented to this Court before, a precisely similar situation did arise in Ohio some years ago. The decision of the Ohio Supreme Court in New York Central R. Co. v. Public Utilities Commission, 123 Ohio St. 370; 175 N. E. 596, is precisely in point on both argument and fact. We set forth some extensive citations from that case.

The railroad company, under compulsion, filed an application for an intrastate certificate which was denied. It appealed on the grounds advanced by the railroad in our case. In setting forth the contentions of the railroad, the Court said:

"The contention that the finding and order of the Commission is unreasonable and un'awful is based principally upon the claims: (1) That the Commission should have considered the substantial economy to the railroad, and the resulting benefits to the public, which it refused to do. * It is disclosed that the real basis of the applicant's claim for a certificate is that the motor truck line which it would operate thereunder would be an auxiliary to its existing railroad line between the points named. Indeed, its application is based upon the claim that its operation of such a motor truck line over such route would result in better service at an ultimately less cost to the public" (103).

At another point in the order after discussing the facts with regard to existing motor carrier service and the prior Commission and Court decisions which had compelled the filing of the application under attack, the Court said:

"The applicant contends that this truck operation" service should be authorized because it is not an isolated independent operation between points named, but is rather a companion service to the service which it provides by rail, and in fact is a substitute for the local freight service formerly operated by it; further that such truck operations are confined to the movement between stations on the line of the railroad, where merchandise is received and delivered; that such operation involves no pick-up or delivery service and is thus made a mere substitute for a more costly local freight train service; further that the proposed operation is not in competition with the business of any existing motor transportation line, in that if this freight were not hauled by truck by this applicant it would be carried by its freight trains; and, further, that the major portion of the shipments handled by it are interstate shipments and cannot be readily separated from intrastate shipments" (105).

The Court will recognize in this language the precise arguments being made by the railroad in our case and adopted by the Commission. In disposing of these unsound arguments the Court said:

"These and other arguments made by the applicant should be addressed to the legislature rather than to the Public Utilities Commission and this court. The New York Central Railroad Company as an applicant for a certificate of convenience and necessity to operate a line of motor trucks over the highways of the state, and thereby transport freight from place to place within the state, is in no better or different position under the statute than any other applicant for such right and privilege. Under the statute there can properly be no discrimination against it. It is the duty of the Commission under the statute in every case, to take into consideration other existing trans-

portation facilities in the territory for which a certificate is sought, and where it appears from the evidence that the service furnished by existing transportation facilities is reasonably adequate the Commission should refuse the application.

This case as presented is exactly the same as it would be if the application were filed by any motor truck transportation company for a certificate covering territory fully and adequately served by duly certified operators. The test of public convenience and necessity must be applied whether the applicant for a certificate to transport freight over the public highways of the state is a railroad company seeking to inaugurate so-called supplemental freight service over the public highways, or an exclusively motor transportation company. The rule to be applied under existing statutes is the same and must be uniformly and universally applied and enforced. The best interests of and the most exicient services to the public do not require a greater number of motor trucks upon the highways of the state than are necessary to supply the public need for such transportation. The public benefit and not private benefit is of first and foremost importance" (105-6).

At another point, in discussing this same question, the Court said:

"Construing these statutes, this court has frequently held that the granting of an application for such certificate is not warranted unless it appears that the public necessity and convenience require the proposed service, and, further, that another motor transportation company, if any, holding a certificate of convenience and necessity granted it by the Public Utilities Commission, covering the same route, is not rendering adequate service, and is not able, ready, and willing to provide the additional service, if any, found to be necessary" (103-4).

The Court in that 1931 case has very clearly set out the answer to every contention made in our case. The facts and argument the railroad relied on are identical with those in our case. Indeed the Court's recitation of what the railroad claimed sounds as though it had been lefted in its entirety from the briefs and the Commission decision in our case.

In case after case it will be found that the courts have said that if there is a service already in the field, a new certificate cannot be granted.

Chicago Motor Bus Co. v. Chicago Stage Co., (1919) 287 Ill. 320;

Choate v. Commerce Commission, (1923) 309 Ill. 248;

Egyptian Transportation System v. L. & N. R. & Co., 321 Ill. 580;

Superior Motor Bus Co. v. Community Motor Bus Co., (1926) 320 Ill. 175;

Cincinnati Traction Co. v. Public Utilities Com., (1925) 112 Ohio St. 699:

Coney Island Motor Bus Corp. v. Public Utilities Com., (1926) 152 NE-25.

A number of the cases specifically hold that it is not enough to show that the public convenience will be served by the proposed operation. The Courts have pointed out that there must be a showing that the public necessity also requires the service:

Cooper v. McWilliams and Robinson, (1927) 221. Ky. 320;

Barnes v. Consolidated Coach Corp., (1928) 223 Ky. 465;

Lykins v. Public Utilities Commission, (1926) 115 Ohio St. 376.

In one Ohio case the Court, in interpreting the phrase "public convenience and necessity", said:

"Perhaps it will not do to give the word 'necessity' its literal meaning and hold that, before a certificate

can issue, there must be an absolute requisite for a motor transportation service; but it must not be wholly devitalized by interpreting it as synonymous with convenience. Necessity, perhaps, in its reference to transportation facilities, may best be construed as contemplating a definite need for a public transportation service in a territory where no reasonably adequate public service exists. It does not contemplate that every prospective customer may have a non-stop service from the point where he becomes a passenger to the point of his destination, nor that he may have an airline between such points. but only that the public generally, in every territory sufficiently populous to justify the maintenance of a public transportation, shall have reasonably adequate service."

Canton East Liverpool Coach Co. v. Public Utilities Com., 123 Ohio. St. 127.

In an Illinois case we find a good expression of the general rule. The Court said:

"To authorize an order of the Commerce Commission granting a certificate of convenience and necessity to a carrier though another is in the field, it is necessary that it appear, first, that the existing utility is not rendering adequate service and it is but a matter of fairness and justice that it be shown that the new utility is in a position to render better service to the public than the one already in the field. It is in accord with justice and sound business economy that the utility already in the field be given an opportunity to furnish the service where it offers and is able to do so."

Chicago R. Co. v. Commerce Commission, 336 Illinois 51.

In another case the Court said:

"It should be made to appear that the inconvenience of the public occasioned by the lack of motor

transportation is so great as to amount to a necessity."

C. R. I. & P. Ry. Co. v. State, (Oklahoma) 252 P. 849.

We have found only the one State Court decision on all fours with our own case. We can find only one State Commission decision in which a railroad has been granted the right to inaugurate a rail duplicating stage line on the theory used in our case. The dissenting opinion, however, contains some most pungent language. After reviewing the railroad arguments which closely paralleled those presented in our case, the dissenting Commissioner said:

"Under this pronouncement, authorization for the substitution by the rail carriers of rail transportation by stage transportation will be a mere matter of routine and presumably the requested authority will be granted by ex parte orders, as no real need will exist for a public hearing."

Re Southern Pacific Motor Transport Company P. U. R. 1929 A, (p. 204).

Application of Commission Theory to This Case

In the foregoing analysis we have tried to demonstrate, among other things, that the Commission has injected a new and unlawful element into its definition of the language "required by the public convenience and necessity." That it was imposing a discriminatory test that can apply only to rail owned applicants and which must always produce a favorable result.

The rule of law, as defined in their brief, is the same as that we have distilled from the cases, although expressed in slightly different language. In describing the tests which it believes to be legally sound, the Commission now says:

"These findings include economies to be effected in the handling of local merchandise freight, increased efficiency, expedited and more frequent local service, and release of freight cars for other and more important rail wice. These findings alone rationalize the Commission's action and are legally sufficient upon the issue of public convenience and necessity' (Commission Brief 12-13).

Such things can only apply to the railroad — the user of the motor carrier service. They are but the normal effects of using any motor carrier — not proof that such service is needed. They are advantages that accrue to the railroad. If they rationalize and justify the order, then a railroad need only show that motor vehicles will be employed and a certificate must issue.

What the Commission has actually set out in the order differs widely from the interpretations in their briefs. Their version of the evidence is not supported by the record. These things will become evident as we proceed with a sentence by sentence analysis of the order.

· In broad outline the Commission has said in substance:

- The obligation of the railroad to transport requires the grant of a certificate even though existing motor carriers are capable of furnishing the service.
- (2) The operation will be in substitution for rail service and, therefore, different from ordinary common motor carrier service.
- (3) It will be more expeditions and less expensive for the railroad.
- Existing carriers cannot furnish it as well as the applicant.

The Commission Brief is not entirely clear as to whether they concede that the adequacy of existing service must be taken into account. The Railroad Brief acknowledges hat this is a proper test (49-50). But, as our analysis will show, the Commission, while claiming to apply that test, has erred in the application of the rule because they have based their conclusion on a preconceived opinion which collides violently with the actual evidence.

The Commission Brief does not discuss the first and most important legal rule the order establishes. There is no mention made of the alleged "obligation" of the railroad. But they do agree with our contention that the Commission order has treated the operation as "being essentially an improved railroad service." The sentences we now analyze are set out in the three controlling paragraphs of the order (10-11). The first of these sentences reads:

"While several motor carriers operate over portions of the routes involved and in some cases perform similar station-to-station service for the Pere Marquette Railroad, it must be borne in mind that the railroad has been and is transporting the traffic in question between its stations and is under an obligation to continue to do so."

If such an obligation warrants a disregard of available motor carrier service, does it not mean that every railroad must be granted a motor carrier certificate? Every railroad has a legal obligation to perform its duty as a common carrier by railroad. The Commission is plainly saying, therefore, that because of this legal obligation the public convenience and necessity requires that all railroads be authorized to also operate this new form of transportation.

In the dissenting opinion in the companion case it was said:

"Congress undoubtedly has recognized the existence of the various modes of transportation and sought to preserve the integrity and the advantages of each, without discriminations, preferences or advantages among them. A railroad has no authority merely by the fact that it is a common carrier to modify its method of carriage to that of a carrier by motor truck. When it seeks to do so no reason is seen why it is not subject to the same requirements as any other applicant for such privilege. In such case the test is not whether the railroad can carry on its existing business with greater economy and efficiency by the changed method of operation, but whether there is a public need for the creation of a new service."

Now note one further incongruous fact. The railroad is not the applicant. This same sentence having been used in other cases where the railroad was the applicant, has been transplanted without their noting that the railroad is not the moving party here.

And unless we are to indulge in some "through the looking glass" reasoning, this alleged obligation of the railroad will not be discharged by the railroad if the certificate is granted, but by one who professedly is not the railroad.

No proof was presented as to this rail obligation. It points up our contention that the Commission has determined as a matter of law that all railroads should be permitted to duplicate their rail lines with motor carrier operations regardless of existing motor carrier service.

The Government, in attacking this unsound reasoning in the companion case now before this Court, said:

"This is obviously unsound reasoning. Even assuming that a rail carrier is under obligation to continue to offer rail service between certain stations, even at a loss, it does not follow that it is under any obligation to furnish motor carrier service between these points. When a railroad establishes motor carrier service, pure and simple, it is undoubtedly entering 'a new field of service.' Perhaps the railroad 'has been ': transporting the traffic in question' between such stations, but it has no legal right to continue to do so if the public prefers to use some other mode of transportation which is more efficient or economical."

This sentence in the order is an admission that we can furnish the service. It is merely an argument that we should not be permitted to do so because the railroad is operating as a railroad and, therefore, should be permitted to have this new and additional right.

In it the Commission recognizes the applicability of the general test as to adequacy of existing service. But it argues that this rail obligation proves that only a rail owned carrier can satisfactorily perform.

This finding cannot be now discarded as unimportant. It is obviously one of the chief legal grounds for the decision. The Court cannot now say that it was not the basis. If discarded, what guide remains to tell us with reasonable clarity just what did serve as the basis for the order?

The next recital is the statement that:

"Applicant's service will be of a different character from that performed by motor carriers generally."

This, according to the Commission Brief, is the controlling legal principle in the case. Earlier discussion has shown that the applicant presented no proof on this subject but that we demonstrated that the proposed service was not different. The Commission now argues that this legal "difference" has been established in the earlier cases. It argues that this "difference" puts it beyond our power to either perform the service or object to the grant.

Is not the Commission unconsciously struggling to establish as a matter of law that motor carrier service rendered by or for a railroad is not the same as identical service for anyone else and that for that reason alone, is governed by a different definition of the controlling statutory language? In other words, is it not defining the statute in a wholly unlawful manner? Note that the only thing in the order upon which this conclusion could be based is the recitation that the service will be for the railroad in claimed substitution for rail service.

The preceding finding completely contradicts it. What does it matter whether the service is "different" or not if, as the Commission has found, these protestants are actually furnishing that kind of service for another railroad? Furthermore, the Commission does not directly say that

the service will differ from that of the competing carriers - it speaks of motor carriers "generally".

Actually, part will be pure motor carrier service and part joint-line. It is only "different" in the sense that it will be for a railroad. That cannot establish need for a new carrier without proving too much. Is not this assertion intended as part of the general conclusion that we cannot furnish the service "as well as" the applicant. And, if so, is it not wholly contrary to all the evidence?

The next sentence reads:

"It will be limited to the handling of merchandise traffic to and from points on the lines of the railroad in substitution of train service."

This sentence is but part of the rule of law discussed above. It is untrue as our citations from the record disclose. The applicant and the railroad specifically refused to accept a limitation of that sort. They have admitted that the service will include handling between docks of consignors and consignees without any connection with the railroad. The limitation imposed, as we have shown earlier, does not restrict the applicant, as this sentence indicates.

But here again is recognition of the necessity of finding that existing service is inadequate. If this is a basic finding of fact, what is the conclusion it supports if not that existing service is inadequate?

The next sentence is also obviously intended to support the allegation, that we cannot furnish the service "as well as" the applicant.

"To utilize the facilities of protestant motor carriers, the railroad would be required to make arrangements with several of them, each performing a more or less disjointed part of the service."

Here again the Commission's only reason for making this statement is its recognition of the necessity of establishing that existing carriers cannot adequately supply

the service. But once more we find a statement that is not supported by the record. Here again the Commission ignores its own findings set out above. It has specifically found that at least two of the motor carriers could furnish service on all of the routes (9-10). The finding is, therefore, contrary to all facts of record. The Commission has merely stated an unsupported conclusion of law that inadequacy must always be an inevitable result of using more than one carrier. But since this application embraces seven separate operations with no through service, this alleged fact has no bearing on the issue. The service proposed is "disjointed" in the sense meant by the Commission. Each route must be treated separately because service on each one has no relation to service on any other except as the railroad insists it wants all the routes.

The next sentence reads:

"The railroad, through its subsidiary, merely seeks the substitution of a more efficient for a less efficient means of service."

This also reveals part of the concealed rule of law that governs the Commission thinking and order. It is but part of the idea that the statute requires a different meaning and application when a railroad is somewhere lurking in the background. This rule of law, as here suggested, is that if a railroad "seeks" (desires) to employ its own motor vehicles in lieu of rail service, that alone warrants the grant. Another facet of the rule is that, in the eyes of the Commission, the inherent superiority of truck service which makes it "more efficient" than rail service, compels a grant. In short this sentence reveals the application of a wholly improper legal definition.

Obviously this has nothing to do with the question of whether we can furnish the service "as well as" the applicant. It is not true as the citations above indicate. The railroad is seeking to engage in ordinary motor carrier service. (See 127-31) (213). The statute will not permit the issuance of any other type of certificate. And this is not a basic finding of fact.

This sentence does indicate, however, that the Commission is employing wholly improper criteria. It is implying that the adequacy or inadequacy of railroad service controls the issuance of a motor carrier certificate. It is nothing but a conclusion without any support in the record. There is no finding of fact in the order to support it.

The sentence is, in essence, the same as the first in which the railroad obligation was advanced as the reason why this certificate should issue. While it is not clearly expressed, it seems evident the Commission is trying to say that the mere fact that the owner is a railroad justifies the grant.

In passing it should not be forgotten that the railroad is not the applicant. Yet this sentence also carries the implication that it has been so considered in disposing of the case. The proper party is not the applicant.

This suggests yet another difficulty. Throughout these cases it is insisted that this service will be "for" the railroad. If the applicant is not the railroad, how can the connecting line service be considered to be that of a common carrier? Throughout the case it was emphasized that the carrier would not solicit business or publish a tariff. The railroad will have the business contacts with the public and its tariff will be used. The applicant can only be held to be a common carrier by viewing its obligation as that of a connecting line.

If we are to talk about this motor carrier service as though it is part and parcel of the railroad operation, then it is not even under the proper statute. If the contracts make this carrier, in effect, a servant of the railroad instead of a servant of the public, should they not have sought a contract carrier permit? But, in such event, the railroad would then have to be regarded as the shipper which it obviously does not want to do. We submit that the Commission has been too vague and uncertain in most of the order to enable the Court to accurately and quickly determine just what has been in the Commission's mind. But if this sentence is to be given any

rational meaning, we must conclude that this proposed operation will be no more nor less than a common carrier connecting line service.

The next paragraph in the order is devoted to discussing matters entirely outside the record. Nothing in the paragraph can support the conclusion that we cannot furnish the service "as well as" the applicant. The Commission refers to another case and says that there the Commission had concluded that this so-called "coordinated rail-truck" service differs from either railroad or motor carrier-service. It should be noted that there is no direct coupling of that statement with our own case. One statement merits some attention:

"It is a new form of service utilizing both rail and motor carrier transportation to advantage and in such a way as to render a merchandise service which is much less expensive and at the same time more expeditious and more convenient and generally satisfactory to the public served."

As in the earlier cases and as we have discussed elsewhere, the Commission is apparently trying to say that the proposed operation is not a motor carrier service. It is creating a hybrid which it claims has characteristics of both rail and motor truck service. While the order does not clearly find that such is the situation in our case, it is apparently leaving that implication. Of course it is contradicted by the undisputed evidence establishing that at least part of the service will have no connection with the railroad except ownership. But there is no warrant in law for issuance of a certificate that is anything other than a motor carrier certificate. And since no witness testified to this effect, the conclusion cannot stand.

When the Commission says that the service will be "less expensive" and "more expeditious" it raises many questions. It is obvious that the Commission is comparing motor carrier service with rail service. There is no evi-

^{*}Paragraph 2 on page 11.

dence to support any comparison of this motor parrier service with that already in the field.

The Commission, therefore, is employing improper criteria. It is determining whether the public convenience and necessity requires a new motor carrier in the field. by arguing that motor carrier service in the abstract, and as shown in another case, is superior to rail service. With that as its major premise, the Commission then comcludes that this inherent superiority warrants the grant of the new certificate despite the fact that undisputed evidence in the record proves that existing carriers can perform the service no less satisfactorily than the appli-The appellants now answer, in substance, that while we may have presented evidence to show that fact, the Commission has laid down as a rule of law, the proposition that service for a railroad by non-rail owned carriers can never be as satisfactory as where there is common ownership - that, therefore, our proof may be disregarded.

The argument of the Government on this point so well sums up our position, we make it our own:

"If the inherent advantages of motor transportation in particular instances are such that it should be utilized in preference to rail transportation, the logical consequence would seem to be that such traffic should go to motor carriers and not to rail carriers, rather than that rail carriers should seek to transform themeslves into motor carriers in order to continue to handle traffic which can no longer be economically or efficiently handled by them as rail carriers."

This whole paragraph is in violation of due process. If it means anything it is an attempt to decide this case on the basis of evidence in another case to which we were not parties. Which, if any, of the sentences are basic findings of fact as shown by our record? All but the last three sentences are clearly not in that class. As to these three, we submit that only the one relating to service elsewhere can be called a fact. The remaining two are con-

clusions. And it is not stated that they are made with direct reference to this case. The context of the paragraph indicates that it is devoted entirely to history. But if any statement is a basic finding, just what does it support?

The first sentence in the last of these three paragraphs reiterates the argument that there will be a "reduction in cost" and "an increase in efficiency". It reads:

"The motor-carrier service proposed by applicant, operated in close coordination with the railroad's service, will effectuate a reduction in cost, and will result in an increase in efficiency in the transportation over the routes herein considered, which will inure to the benefit of the general public."

Our prior discussion has covered this argument. Here again we find the comparison of motor carrier service with rail service and the conclusion that the certificate must be granted because of a claimed betterment. The fact that the motor carrier service will be more efficient than rail service does not establish that there is a great public need for that improvement — let alone that a new carrier must furnish it despite the existence of many carriers capable of doing the same thing.

This is not a basic finding. It is a mere conclusion—or series of conclusions. If a reduction in cost to the rail-road is a basic finding, then what does it support? It obviously has no relation to the adequacy of service. The statement that there will be an increase in efficiency is so obviously a conclusion, there is no ground for a claim that it is a basic finding. And it is equally obvious that it is related only to rail efficiency. In other words—since motor carrier service is superior, it automatically follows that the railroad should be allowed to change its character. It is a reason that must always produce a favorable order.

The Commission is confusing what it calls a public "benefit" with public convenience and necessity. It begs the main question — is this alleged benefit more than

merely desirable and can it be furnished only by the applicant.

The last sentence immediately preceding the basic conclusion that we cannot render the service "as well as" the applicant states something that is contradicted in every line of the record. The Commission says:

"Furthermore, it does not appear that the restricted service would be directly competitive or unduly prejudicial to the operations of any other motor carrier."

This is a wholly argumentative conclusion. But the only evidence in the record is that which we presented. showing that there is and will be keen competition. The argument will undoubtedly be made that all the Commission means is that since the railroad owner now has the business, there can be no competition. This is pure sophistry. The railroad does not hold a patent on any business. Every future movement of freight will be the subject of competition. It will not become railroad freight until the railroad has successfully challenged our efforts. to obtain such business. If the present railroad service is poor in comparison with the proposed new motor carrier service, there will certainly be a new and important competitive element introduced if this certificate is granted. Conditions will not remain static. Every solicitation will necessarily include a reference to how much better service can now be furnished — and the standard of comparison will then be the service of present truck lines (389). All this talk about service improvement is meaningless if it will have no effect on the competitive situa-The railroad argues that it wants this certificate (through its subsidiary) so that it will be better able to compete with us, yet the Commission concludes that there will be no "direct" competition.

In reality, the Commission, in using this argument, is not even thinking about the record. It believes that the "close coordination" required can only be achieved through common ownership and somehow uses that as the

foundation for this assertion about competition. It is unquestionably betraying the fact that it feels that a railroad should always be permitted to own and operate its own truck line regardless of all else. If the argument cannot be answered by a showing that existing carriers can furnish the service in "close coordination" with the railroad, does it not mean that the Commission has determined the issue on the basis of a preconceived belief and policy?

The Commission's theory in all these cases amounts to treating the inherent advantages of motor carrier-service over rail service as complete justification for admitting the railroad into the motor carrier field. The Attorney General phrased it this way:

"When 'public convenience and necessity' is thus treated as an automatic consequence of what a railroad does, it would seem to follow inescapably that the Commission has in truth adopted 'railroad convenience' as its standard of judgment, and departed from the criterion of public convenience and necessity prescribed by the applicable statute."

In the next finding the Commission speaks of the new operation as serving a "useful public purpose" and concludes that:

"such useful public purpose cannot be served as well by existing motor carriers."

The evidence discloses without dispute that the existing motor carriers can furnish the so-called "co-ordinated" service "as well as" the applicant. We have cited elsewhere the controlling portions of that testimony to demonstrate that this basic conclusion is completely contrary to every fact of record.

If this determination that existing carriers cannot furnish the service "as well as" the applicant is to be justified, the order must set out several important findings which must find support in the evidence. Obviously the witnesses upon whom they rely to establish that point

must have complete knowledge of the service of all of the existing carriers as well as of that proposed by the applicant if they are to make this comparison. The record must contain positive and clear testimony making such a comparison. The citations from the record set out earlier disclose three important facts: (1) their witnesses were completely without knowledge of the service of any of the existing motor carriers; (2) their witnesses did not make any comparison or give any testimony upon which the Commission conclusion that we could not furnish the service "as well as" the applicant could be based; (3) the protestants presented uncontradicted evidence to show that they could furnish the service "as well as" the applicant or any other carrier.

No fair-minded person can find any support in the record for this conclusion unless we start our search by acknowledging that no independent motor carrier can ever perform "as well as" a rail-owned one. Search the briefs and the order as we may, there is nothing cited in support except the bald statement that this is a rule of law that no evidence can alter.

In summary, therefore, we find that the validity of the order depends upon acceptance of a new set of definitions of the statutory language. The order starts out by setting up the rule that the obligation of the railroad owner to transport overrides all other considerations. Next it is said that since motor carrier service, as such, is faster and cheaper (for the railroad) than rail service, all railroads should be authorized to enter this new field. And then they say that the very nature of this "co-ordinated" service demands common ownership.

All these rules of law can never apply to anyone but a rail owned applicant. If sound, no hearing is required. If correct, there can never be a denial order entered.

Protestants Deprived of Fair Hearing

Several rather arbitrary actions by the Commission and the Joint Board conspired to deprive us of our right to a full, free and fair hearing. One of these incidents had to do with the alleged contract for the proposed service between the parent railroad and its subsidiary. Another had to do with the rejection of proof that would have demonstrated that every shipper witness produced by the applicant had appeared for an improper reason and that the testimony they gave was not true.

by seven separate contracts. At the first hearing the contracts were not produced although the Joint Board allowed testimony with regard to them. During the interval between the first and second hearings we applied for a subpoena duces tecum to compel production of those documents. Without issuing a formal order the Commission denied that request in a letter dated May 28, 1942 in which the Secretary of the Commission said:

"I understand that the applicant has indicated to the Joint Board that if it considered the contract relevant, it is agreeable to supplying a copy for the record. The Joint Board having participated in the early hearing is familiar with the issues and in a position to judge whether the contract is relevant and material. It is suggested, therefore, that the question of the production of the contract be taken up with the Joint Board at the further hearing and if the Joint Board believes the contract should be made a part of the record, the applicant will supply it" (440).

No explanation for this peculiar procedure was offered. It appears, however, that the Commission must have communicated with the railroad or it would not have made the statements cited. It was with some surprise, therefore, that we found that neither the railroad nor the applicant was willing to produce the contract for our use. It should be obvious that its production would have made it possible to submit that document to our own witnesses in interrogating them with regard to their willingness and ability to furnish the proposed service. It would certainly have afforded us much information for use in cross examining both the railroad witnesses and the applicant's

witnesses. All of the arguments about there being a "difference" in service would have been thoroughly exploded through the use of that document alone.

When we requested production of the contract, both the railroad and the applicant refused to present it unless ordered to do so by the Joint Board (688). We vainly argued about the materiality of the document and discussed at some length the Commission letter cited above. We asked that all evidence dealing with the relationship between the railroad and its subsidiary be stricken if the document was not produced (693-695).

The impression had been created that there was no contract in the hearing room. It was then suggested from the bench that the contract be filed after the close of the hearing. At about that time, however, we discovered that counsel for the railroad and applicant had actually produced the document and had exhibited it to the Joint Board. The members read the document and then refused to permit us to even look at it (693). We vigorously protested and asked several times that we be allowed to have the document for examination and to use it in cross examining the witness then on the stand (693-695). We asked the Court to read that part of the record commencing at page (687-696) dealing with this incident.

With the document present in the hearing room and with the knowledge that the Joint Board had been prejudiced by having it exhibited to them, we naturally moved to exclude it from the record unless we were given the rights to which we were entitled. The Joint Board denied this motion and the accompanying one to strike all testimony dealing in any way with the subjects covered by the contract. The Examiner became very short with us and suggested that we confine anything we had to say to our brief.

This conduct, we submit, outrages all concepts of fair play. If the proposed service is claimed to be beyond our power to perform, it must, in part, be due to the peculiar nature of the arrangement between the parties. While we

have shown that this is not true by other evidence relating to the physical nature of the service, we submit that we were entitled to an opportunity to place their witnesses on record as to what there was in the contract that made performance by as impossible. We submit that it is strange doctrine which permits the Commission, the applicant and the railroad to make full use of the document at the hearing but which deprives us of all opportunity to even see it. With the document before us, we could have safely asked their witnesses to point out the feature in that document which, in their judgment, would have prevented our furnishing the service. The fact that the document itself does not have any such language is important evidence in support of our view but the right to cross. examine their witnesses is another right to which we are obviously entitled. And no less important is the right to submit that document to our own witnesses in an effort to demonstrate that they would willingly enter into the same arrangement and that they could and would furnish the service required thereunder. Due process has been denied us.

Also during the interval between the two hearings we conducted an intensive traffic survey along all of these routes. In so doing we discovered that all of their shipper witnesses had appeared at the initial hearing for reasons far removed from those claimed by the applicant. We obtained admissions that bore on all of the important issues in the case. They admitted that they had no need for any changed or additional service. They admitted that they had appeared because they were employed by the railroad or that they depended on the railroad employees for their livelihood. We obtained admissions that proved bias, prejudice, and related matters.

When we sought to present this evidence, the Joint Board refused to allow any of it in the record. While we made an offer of proof it did not, of course, have either the completeness or the force of the testimony itself.

. We went to great lengths in trying to persuade the Commission to reopen the proceedings for the purpose of letting us be heard on these matters. We called these

errors to the Commission's attention in as vigorous a manner as decency permits but all to no avail. We submit that the language used by the Court in Morgan v. United States, 304 U. S. 1 is particularly applicable here.

SUMMARY

The Court's first inquiry will be directed towards discovering the basis for the ultimate conclusion. Until the Court can see clearly what it is that supports the grant, it cannot determine whether the law has been properly applied or whether proper findings based on substantial evidence have been made. The confused and contradictory nature of the findings here, confront us with an almost impossible task.

Has the Commission decided this case on the theory that the adequacy of existing service must be taken into account? If this is accepted as a necessary element in the definition, has the Commission determined that this includes a consideration of both rail and truck service? If so, where are the basic findings of fact that would justify a conclusion that all such existing service is inadequate?

Or has the Commission considered the adequacy of only one of the forms of transportation to the complete exclusion of the other? If so, which form has it considered? Or has it really considered the adequacy of either form?

Has the Commission rejected as inapplicable the test of adequacy of existing service? If so, what has the Commission substituted as the proper test? And what basic findings have been made in line with that test?

The facts are not complicated: (1) the railroad desires to offer motor carrier service to the public; (2) it has no knowledge of existing service; (3) it refuses to use existing carriers; (4) while part of the operation will be a connecting line arrangement, some of it will be pure motor carrier service; and (5) advantages will accrue to the railroad. All else in the order is speculation or legal conclusion.

We have not contended for the principle of res judicata - we are not raising the question of Commission consistency. Our attack raises judicial questions - not administrative ones. We do contend that these prior decisions show the true character of the Commission's acts. We do argue that the prior decisions of the Commission which hold that a necessary element, in proving that the public convenience and necessity requires a new motor carrier, is a showing that existing motor carrier service is inadequate, are lawfully correct. We do argue that the Commission has insincerely applied this proper legal meaning. In doing so it has adopted an interpretation which applies only to rail owned applicants and which inexorably compels a favorable decision on all requests by such applicants. Its ambiguous findings cloak a hidden meaning and a substitution of a Commission belief for proof on the subject of the adequacy of existing service.

The Commission has applied the statute with an unequal hand. It has made unjust and illegal discriminations between persons in similar circumstances in the manner condemned in *Yick Wo v. Hopkins*, 118 U. S. 356. The mere fact of rail ownership has been the unlawful basis for the discriminatory application.

If the adequacy of existing service is not considered, there is but one thing left. All that remains is the comparison of rail and motor carrier service unless we accept as controlling, the argument about the railroad obligation to serve. But this comparison has nothing to do with the facts in a particular case. It is based on the inherent qualities of the two types of service. Since motor carriers "generally" offer the claimed advantages just because they are motor carriers, this argument or basis for the order, if sound, means that all railroads are entitled to also operate as motor carriers. It means that no successful opposition can ever be offered — the test must always produce the same result, not because of evidence, but simply because of the nature of things. In other words, it is an attempted legal definition of the phrase "required by the public convenience and necessity". It is a definition that applies only when a railroad is involved and which will not permit of a denial.

We contend that the order exceeds all bounds of reason — that no fair-minded person could reach the conclusion that this certificate should issue on the evidence presented. In many cases the Court has said that if the order is beyond the bounds of rational inference, it cannot be sustained. Here all the evidence points in a direction contrary to the decision. Nothing of record warrants the conclusion that a new carrier is required if the public is to receive adequate motor carrier service.

The Commission has based its order on a number of new legal definitions which we contend are improper and unsound. It holds that the alleged legal obligation of the railroad to function as such is an important part of the definition. It holds that motor carrier service for a railroad is always different from service for anyone else. It holds that the inherent superiority of motor carrier service over rail service satisfies the statute. It rules that independent carriers cannot satisfactorily furnish the service because there must be "voluntary co-operation" which the railroad is unwilling to supply. It substitutes its opinion, that only a common ownership can satisfactorily furnish the service, for evidence — it overrides uncontradicted evidence.

Practically all that appellants say on brief has to do with new rules of law. In a nutshell their argument is that motor carrier service for a railroad being highly desirable, is always "required by the public convenience and necessity" but only where the railroad owns the applicant can a certificate issue. Most of the "facts" they advance as the foundation for their argument were not found by the Commission. We have discussed such subjects only because we thought it would point up the other errors.

If Commission orders can only be permitted to stand when supported by substantial evidence and when based on correct interpretations of law then this order must fail on all counts. If the tests by which the Commission authorized the grant are valid, then no railroad can ever be denied — no independent carrier can ever prevail — and the independent motor carrier industry will be driven from the field by a rail-owned transportation monopoly.

. We submit that the Court below was correct in setting the order aside.

Respectfully submitted,

KIT F. CLARDY,
712 Olds Tower,
Lansing, Michigan.
ROBT. E. DESROCHES,
2379 National Bank Bldg.,
Detroit, Michigan.

Counsel for Appellees:

Harry A. Parker, d/b/a Parker Motor Freight, Regular Common Carrier Conference of the American Trucking Associations, Inc., Creston Transfer Company, Consolidated Freight Company.

Howell Ellis, 520 Illinois Bldg., Indianapolis, Indiana. Of Counsel.

Dated at Lansing, Michigan, March 5th, 1945.

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CHARLES ELMORE OROPLEY

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 507

The INTERSTATE COMMERCE COMMISSION, the WELLETT COMPANY OF INDIANA, INC., and the PENNSYLVANIA RAILROAD COMPANY,

Appellants,

vs.

HARRY A. PARKER, Doing Business as PARKER MO-TOR FREIGHT, REGULAR COMMON CARRIERS CONFERENCE OF THE AMERICAN TRUCK-ING ASSOCIATIONS, INC., Et Al.

Appellees.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF INDIANA

BRIEF FOR APPELLEE, NORWALK TRUCK LINE COMPANY

FRED I. KING,
CLAIR MCTURNAN,
1008 Odd Fellow Building,
Indianapolis 4, Indiana,

Counsel for Appellee,
NORWALK TRUCK LINE COMPANY.

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Appellees.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF INDIANA

BRIEF FOR APPELLEE, NORWALK TRUCK LINE COMPANY

The Norwalk Truck Line Company appeared as a protestant before the Commission (R. 74), and as a plaintiff in the court below. (R. 17.)

Findings and Decree of Court Below

The findings of fact, conclusions of law thereon and decree of the specially constituted District Court from whose judgment this appeal is taken are as set out in the Appendix and embrace the following findings: The proposed motor carrier operations were competitive; present motor carriage was not shown inadequate; the railroad was unwilling to use any existing and available motor lines; and public convenience and necessity did not appear from the evidence.

The decree enjoined operation under the Commission order.

STATUTE INVOLVED

The statute involved is the Interstate Commerce Act, Part II. The applicable provisions thereof are set forth in the Appendix, infra, pp. 37-41.

THE QUESTIONS INVOLVED

Generally, the questions involved are:

- 1. Whether the applicant met the statutory requirements as a proposed common carrier.
- 2. Whether the evidence was such as to justify the District Court in finding it insufficient to support the Commission's findings.
 - 3. Whether the findings were such as to justify the District Court in determining that the Commission's conclusions should not be sustained.
 - 4. Whether the record or order disclosed a proper application of statutory standards and policy.

Certain questions inherently broader than the foregoing are likewise involved, e.g.

- (a) Whether the Commission under the general policy of the Act did not have power to order the co-ordination of one or more forms of transportation service with one or more of the other forms of transportation service without creating new and otherwise unnecessary ones.
- (b) Whether the policy of the Act, to preserve the inherent advantages of each mode of transportation to the end of developing, co-ordinating, and preserving a national transportation system by water, highway, and rail, is not violated by the practice of granting to railroads authority to institute competitive motor service where such railroads refuse to co-ordinate their services with available motor carriers operating in the field.
- (c) Whether terms such as "auxiliary service," "supplemental service," "railroads' own freight," "useful public service;" or "co-ordinated auxiliary service" may be imported into the Statute to create types of carriage and carriers and standards not recognized by the Statute.

STATEMENT

The judgment and decree of the Court below was rendered upon an action (R. 1-8) instituted by appellee, Harry A. Parker, d/b/a Parker Motor Freight, in the United States District Court to set aside an order (R. 6-14) of the Interstate Commerce Commission, approved September 25, 1943, granting a Certificate of Public Convenience and Necessity to the Willett Company of Indiana, Inc., authorizing operation as a common carrier of property in interstate and foreign commerce over the public highways between Fort Wayne, Indiana, and Mackinaw City, Michigan, serving all station points of the line of the Pennsylvania Railroad extending between said cities of Fort Wayne and Mackinaw City and branch lines in the State of Michigan connecting therewith.

This appellee was one of the motor carriers appearing as protestants in the proceedings before the Interstate Commerce Commission (R. 74), and was an intervening plaintiff in the action in the court below. (R. 17.)

The Pennsylvania Railroad Company was not an applicant but appeared in support of the application of appellant, Willett Company. (R. 74.) The railroad neither filed nor tendered any earnings statement nor any statements relative to its financial condition, and there was no evidence on the subject.

The application (R. 59) did not pertain in any respect to a consolidation or merger of properties or franchises of carriers into one corporation; nor to the purchase, lease or contract to operate the properties of any carrier by another single carrier or by carriers jointly; nor to the acquiring of control of any carrier through ownership of its stock or otherwise.

The service proposed to be rendered by the applicant was the transportation by motor vehicle of commodities generally moving on freight bills or bills of lading of the Pennsylvania Railroad (R. 163, 171); under the railroad's published tariffs (R. 171), and consigned to receivers of freight at station points along the lines of the Pennsylvania Railroad from Fort Wayne, Indiana, to Mackinaw City, Michigan. (R. 92-94.)

The mileage included in the routes over which the proposed service was to be rendered aggregated 569.9 miles by highway serving points along 454.7 miles of the railroad. (R. 432.)

The estimated monthly tonnage to be handled by the applicant over all of the proposed routes in the proposed service was 3,400,020 pounds. (R. 95-98, 427.)

All solicitation of freight and all billing and receipting were to be performed exclusively by the railroad. (R. 106.) All freight was to move on railroad tariffs and all revenue from freight carried was to accrue to the railroad.

The applicant is a wholly-owned subsidiary of the Pennsylvania Railroad Company (R. 146), and proposed, in the event the requested authority was granted, to render service exclusively to the Pennsylvania Railroad Company under such contract, in which the applicant was described as being engaged in the trucking business as an original private and independent contractor (R. 723-725), but had no control over time, schedules, rates, no business contracts and no power of contract with shippers; the contract was terminable by either party on thirty days' notice. (R. 725.)

The specially constituted U. S. District Court found the proposed motor carrier operations of the applicant would be competitive with existing motor carrier service; that the railroad refused to make use of any of the existing motor lines; that there was no evidence to show that the service rendered by existing motor carriers was or would be inadequate, and no substantial evidence to prove public convenience and necessity had been offered. (R. 45 and Appendix p. 36.)

The court's conclusions of law and findings were that (a) the applicant did not meet the statutory requirements, (b) the Interstate Commerce Commission failed to exact from the applicant, as a railroad subsidiary, the requisite proof to establish public convenience and necessity, (c) there was no substantial evidence to support the order of the Commission that public convenience and necessity required the issuance of a certificate of public convenience and necessity authorizing the proposed operations over

the routes involved, and (d) the order was, therefore, illegal and void and should be permanently enjoined. (R. 45, 46 and Appendix p. 37.)

SUMMARY OF ARGUMENT

The applicant did not meet the statutory requirements for qualification as a common carrier of freight by motor vehicle.

The status of the applicant did not conform to the definition of the term "common carrier" as provided in Sec. 203 (a) (14) of Part II. (See Appendix p. 37.)

The applicant did not propose to conform with the provisions of the Act requiring the publishing and filing of tariffs and the issuance of bills of lading. (See Appendix, pp. 38, 39.)

The applicant was an operator-owner of motor vehicles operating for the Pennsylvania Railroad Company under contract. Thomson v. United States, 321 U. S. 19, 24, 25; United States v. N. E. Rosenblum Truck Lines, 315 U. S. 54, 55.

No issue relating to merger, consolidation, or acquisition of control between or among carriers of any class was presented by the application or by the evidence.

The standards for testing an application for merger between carriers or acquisition of control of one carrier by another are not applicable to an application for original grant of certificate of public convenience and necessity for a new carrier. (Contrast, Sec. 5 (2) (a) and (b) and Sec. 207 (a) of the Act.)

The structure and policy of the Act contemplate preservation of the identity of the several types of carriers, subject only to such apthority for co-ordination between

existing carriers of different types as the need of a national system of co-ordinated carriers may require and to specific exceptions, involving merger and control, provided for in the Act and not applicable here.

It is contrary to the intent, policy and purpose of the Act to permit one carrier by its own refusal to lend its facilities to co-ordination or connecting carriage with other adequate, existing competing carriers, to create a supposed public need and ground for grant of certificate, for new carriage or routes, to it or its nominee.

The right and duty of the Commission to require essential co-ordination of existing carriers, United States v. Pennsylvania Railroad Company, 67 S. Ct. 471, 473, and the policy of the Act to permit an integrated system for serving various modes of carriage, is opposed to the theory that co-ordination of rail with motor carriers is a matter of rail carriers' volition or a matter of giving dominance and control to rail carriers.

The theory that a rail carrier has an inherent right to a certificate of carriage by motor of all freight that can be successfully solicited by it for carriage either by rail and motor or by motor alone in serving motor stations on its own lines and on highways paralleling its lines, would operate to exclude independent motor carriers. Such theory is in conflict with the policy and purpose of the Act, and the repeated indulgence of the theory by the Commission pannot operate to change the force and effect of the Act.

The evidence offered to support a conclusion that the proposed new carrier grant was a matter of public convenience and necessity does not disclose any convenience or necessity of the public that would not be equally well served by acceptance by the rail carrier of tendered co-

ordination by numerous existing motor carriers, or by Commission order for co-ordination between rail and existing motor carriers.

The railroad company would lose profit of motor carriage by denial of the application, but such loss does not appear to be of sufficient consequence to impair the national system of transportation, or to justify a conclusion that the existing carriers could not serve the public as well as the applicant.

The theory that involuntary co-ordination would work compulsory duty on the existing competing carriers and might in some respects be less pleasing to the rail carrier than would be a new grant, is not a theory by which to overcome the broad purpose of the Act to serve public convenience and necessity without waste or duplication of existing carrier service and facilities.

The existing motor service was admittedly adequate and highly competitive, the motor carriers were willing, able and wanting to carry all freight which the Railroad proposed to solicit for the applicant. In such a state of competition and without restrictions limiting the applicant to freight of rail origin or termination, it could not be said that the competition of the applicant, whether called direct or indirect, would not be prejudicial, and this is no less true if, as is apparently assumed by the order, the quantity of freight to be solicited by the Railroad and carried by the applicant was of substantial consequence to the public.

The claim that the competition of the applicant would not be prejudicial to the existing motor carriage, but would be so acute as to render it undesirable for the Railroad to risk co-ordination with an

existing carrier, lacks the consistency necessary to support a finding of absence of competition.

The mere adoption by an administrative body of new nomenclature or terminology such as "auxiliary," "substituted or supplemental service," "public utility," "new type of carriage," "railroad's own freight," "indirect competition" for old facts and circumstances known at the time of the enactment by Congress, do not expand or diminish or render inapplicable the purpose, force or effect of the enactment.

The restrictions of the order do not prevent continuous carriage, entirely by motor and without rail origin or termination, for at least 500 miles in one general direction and to and through the industrial centers and towns built along the rail line or through which the rail line was built; do not prevent such carriage of full truckloads (which, rather than carloads, is the material unit in permissive motor carriage) for such distance and through such points, and do not prevent such solicitation and carriage by motor of all freight that can be obtained along the route through the active, intended solicitation of the Railroad. Such restrictions consequently are not a substantial limitation of competition between the applicant and existing motor carriers, and findings based on the theory that it is such a limitation are unwarranted findings.

No claim of intent of the Railroad for self-restraint in the carriage of freight by motor may be considered, the intention being subject to change uncontrolled by any restriction in the order, and the Railroad not being subject to the order.

The fact that the Commission reserved authority to modify the order does not affect the force or the present effect of it or any question arising on the face of it as it now stands. Federal Power Commission v. Hope Natural Gas Company, 64 S. Ct. 281, 295; I. C. C. v. Inland Waterways Corporation, 319 U. S. 671, 701.

The decision of the District Court is correct, if applicant is not a common carrier, or the evidence does not support the Commission's findings, or the findings its conclusions; or if the material facts failed of consideration, or the bases of its conclusions do not clearly appear from the findings; or if the statutory standard and policy were not correctly interpreted and applied.

ARGUMENT

I

THE APPLICANT WAS NOT A PROPOSED COMMON CARRIER WITHIN THE DEFINITION OF THE ACT

The application, on its face, was for proposed common carrier operation in transport of commodities generally by motor vehicle in interstate commerce. (R. p. 60.) The Commission's order thereon was for grant of certificate of public convenience and necessity to the applicant as a common carrier by motor vehicle. The grant is governed by Part II of the Interstate Commerce Act. Section 203 (a) (14) of the Act defines the term "common carrier" as meaning "any person which holds itself out to the general public to engage in the transportation by motor vehicle in interstate or foreign commerce of passengers of property or any class or classes thereof for compensation."

The record discloses, and the briefs of the appellants admit and claim that the Pennsylvania Railroad exclusively was to solicit all freight transported by the applicant, to contact and contract with the public in respect thereto; was to determine the schedules or times of operation of the applicant, the amount of freight to be carried, the stations between which it should be carried, and to assume complete responsibility and control of the motor carrier operations, except for the furnishing of motor equipment and employment of drivers. The motor carrier was to have "no relationship whatsoever with the general public." (R. pp. 65, 75. Commission's Brief p. 43. Pennsylvania Railroad Brief p. 8.) In this connection it

is to be noted that the Act (Sec. 217 (a) Part II) imposes upon every common carrier the duty of filing with the Commission and keeping open for public inspection tariffs showing all rates, fares and charges for transportation and all services in connection therewith; and Section 219 of Part II of the Act requires all common carriers by motor vehicle to comply with Section 20 (11), (12) of Part I of the Act requiring the issuance of receipts or bills of lading by the common carrier when receiving property for transportation. (Appendix pp. 38, 39.)

The contract between the applicant and the Railroad relating to the proposed carriage is entirely amenable to the construction placed upon it by the evidence of the intention of the parties thereto and the manner in which they would actually operate. That contract (R. p. 723) refers to the applicant as a trucker engaged in the trucking business as an original private and independent/contractor. The term "independent contractor" may be mere nomenclature within the decision of this court in Thomson v. United States, 321 U. S. 19, 22, 24, 25 and United States, et al. v. N. E. Rosenblum Truck Lines; Inc., 315 U. S. 50, 54, 55.

Further provisions of the contract required the applicant "to indemnify railroad"; to comply with Railroad's rules and regulations. Payment of the applicant for its services was to be made by the Railroad on the basis of motor units involved and mileage traveled, and the employment of additional equipment by the applicant was subject to the direction and authorization of the Railroad. The contract was subject to termination by either party upon thirty days' written notice. (R. 725.)

The record and the findings, including the contract between Railroad and applicant and the claim of applicant; as to the nature of its proposed service, all disclose that the requirements of the statute for common carrier, viz.: "a person which holds itself up to the general public to engage in transportation by motor vehicle of property for compensation" were not met by the person of the applicant, and further disclose that the Railroad, which is not the applicant, is the only common carrier involved in the proposed carriage.

The following language from Thomson v. United States, 321 U. S. 19, is applicable:

"The written contracts describe the operators as 'independent contractors' and state that 'nothing herein contained shall be construed as inconsistent. with the status.' The contractors are bound by these contracts to provide vehicles of a type satisfactory to the railroad for the purpose of transporting freight. between certain specified freight stations in accordance with such schedules and instructions as shall be given by the railroad. The contractors agree to transport such freight as the railroad designates in a manner satisfactory to the railroad. All persons operating the motor vehicles are under the employment and direction of the contractors and are not considered railroad employees. The operations are conducted under the contractors' own names and the. vehicles do not display the railroad's name. contractors further agree to comply with state, fedcraft and municipal laws and to indemnify the railroad against any failure or default in this respect. They also agree to indemnify the railroad against all loss or damage of any kind resulting from the operation of the motor vehicles. (Id. p. 22.)

"The undisputed facts here disclose that only the railroad holds itself out to the general public to engage in a single complete freight transportation service to and from all points on its lines. As an integral and essential part of this service tendered by the railroad, motor vehicle transportation between certain stations is provided. It is completely synchronized with the rail service and had none of the elements of an independent service offered on behalf of the motor vehicle operators. Their operations are the operations offered by the railroad as component parts, not as separate or distinct segments, of its single service. They may be replaced or eliminated at the sole discretion of the railroad." (Id. p. 24.)

While under the order the applicant can engage in transportation of freight which has no origin or termination in rail carriage, nevertheless it is the railroad alone which can contact and contract with the public for transportation under the evidence.

Whatever may have been the reason that application was made by Willett Company rather than by the Railroad, whether because of any bearing on the question of "indirect competition" or otherwise, the material fact remains that, in the main, throughout the Commission's findings and order, the Railroad was considered essentially to be the applicant.

Without a proper applicant for common motor carriage before it, an applicant within the definition and requirement of the Act, the Commission was without authority to grant the order.

In its assumption that the applicant qualifies as a common carrier entitled to a certificate, the Commission adopted a new and novel definition of the term, unwarranted by approved standards of nomenclatorial construction.

While this departure from established standards of construction is, in itself, of sufficiently serious nature to condemn the entire proceedings before the Commission, the matter is particularly significant as indicating the processing the process

esses of reasoning which activated the Commission in its decisions on other and vital issues involved.

II

THE APPLICATION IS FOR CERTIFICATE OF PUBLIC CONVENIENCE FOR COMMON CARRIAGE, AND THE SECTIONS OF THE ACT AND STANDARDS RELATING TO MERGER OR ACQUISITION OF CONTROL DO NOT APPLY

The statutory requirement for merger or acquisition of control of existing carriers and the statutory requirement for grant of certificate for common carriage by motor vehicle are separate and distinct requirements. (Section 5 (2) (a) and (b) and Section 207 (a) of the Act.) For merger and acquisition of control the requirement is that they shall be consistent with the public interest and not unduly restrain competition; for certificate of public convenience and necessity for common carriage by motor vehicle, the statutory requirement is public convenience and necessity.

The application of Willett Company is for certificate of public convenience and necessity, not for merger or acquisition of control, and the standard for testing the merit of the application is Public convenience and necessity.

While there is some relation between the statutory standard for merger and that for certificate for common carriage, the two standards are by no means synonymous. It appears from the Act that application for merger and for acquisition of control of another carrier involves only existing carriers previously certified as to public convenience and necessity. As an incident of this requirement

for merger and control, public interest for merger could not be found unless public convenience and necessity for operation had previously been found. But that is a mere incident of the order in which certificates for carriage and grants for merger must occur and is not inherent in the meaning of the terms "public interest" and "public convenience and necessity."

The Commission found that the proposed service would have public use, would inure to the benefit of the general public, but these findings do not meet the statutory requirement for certificates of public convenience and necessity. United States v. Carolina Freight Carriers Corporation, 315 U. S. 475.

The conclusion of the Commission that public convenience and necessity required the grant of certificate in so far as based on the findings that the proposed service would have useful public purpose and would benefit the public, would not be supported by such findings even if the findings themselves had been supported by the evidence.

Ш

THE CORRECT STATUTORY STANDARD MUST NOT ONLY BE RECOGNIZED BUT CORRECTLY APPLIED TO SUSTAIN AN ORDER GRANTING A CERTIFICATE FOR MOTOR CARRIAGE

There are numerous decisions in which the evidence has been adequate to support the findings and the findings to support the conclusions and in which this Court has said that it was not the province of the Court to exercise administrative judgment under such circumstances. The question here presented, however, is whether there is ade-

quacy of evidence and findings and whether the controlling statutory standard has been properly applied. These are questions which Courts can and do determine. Florida v. United States, 282 U. S. 194, 212, 215; Interstate Commerce Commission v. Northern Pacific Railway, 216 U. S. 538, 544, 545; United States v. Carolina Freight Carriers. Corporation, 315 U. S. 475; Eastern-Central Motor Carriers Association v. United States, 64 S. Ct. 499 at 508.

It has been suggested that the statutory standard of public convenience and necessity, is not subject to definition or limitation and that as a consequence the Commission may give its own application to the standard. However, it has never been held by this Court that public convenience and necessity are such nebulous elements as to be without possibility of judicial comprehension or to lack the definitive basis essential to permit review. The contrary has been held, Eastern-Central Motor Carriers Association v. United States, 64 S. Ct. 499; New York Central Securities Company v. United States, 287 U. S. 12; and, it seems, necessarily so if the statutory authority for the commission to issue certificates is given validity.

The findings of the Commission are predicated upon the assumption that, where a railroad controls a motor carrier operating in a competitive field and carrying freight, a part of which has originated on or will terminate on rail, there is no direct competition with the other motor carriers; that "less than carload lots" has some significance in motor carriage in which the unit capacity is truckload lots and necessarily less than carload lots; that a service rendered by a subsidiary applicant of a rail carrier is a better service on behalf of the public than the same carriage if performed by independent motor carriers ready, willing, qualified and certified by the Commission

for carriage; that it is possible to identify or recognize future freight, to be derived from sources and points within a given territory as peculiarly the freight or traffic of the railroad in which the railroad has some inherent cognizable and identifiable right, and that this applies not to the traffic that has been, but the traffic that is to be solicited in competition in the future; that the economy and expedition of motor carriage, both independent of and in association with rail carriage, is greater if performed by motor carrier, controlled by the railroad, than if performed by qualified independent carriers. These assumptions are without warrant in the evidence and are not inherently true agart from evidence showing the special circumstances, if any, under which they might be true. The cannot supply the omission of evidence. So great a part do these assumptions play in the findings of the decision that it is, to say the least, difficult to determine whether they have not constituted the sole reliance of the Commission for its order. If such was not the reliance of the order, the question then arises as to what may have been the basis upon which the Commission reached its conclusion that public convenience and necessity required a grant of certificate, a question considered in the next division of this argument.

A RAIL CARRIER HAS NO INHERENT RIGHT TO CERTIFICATE FOR CARRIAGE OF FREIGHT BY MOTOR WHEN ADEQUATE INDEPENDENT MOTOR CARRIAGE EXISTS AND IS WILL-ING, ABLE, READY AND WAITING TO RENDER THE SERVICE

The briefs of the Commission and the applicant have correctly pointed out that it has been an almost uniform practice of the Commission to grant to rail carriers or their

subsidiary applicants certificates of public convenience and necessity for motor carriage whenever it appears that the railroad desires to employ motor carriage more or less in connection with its rail service. Such motor carriage has been described by the Commission as "auxiliary" or "supplemental" rail service. The Commission, however, has recognized the difficulty of defining the terms (see Southern Pacific Co., Control Valley Motor Lines, Inc., MC-F-2073, 39 M. C. C. 441), and almost uniformly in the later grants, the railroad has been permitted to engage extensively in the carriage of freight which is to be transported by motor vehicle only.

The definitions do not disclose justification for the practice, nor does terminology adopted by the carriers, such as "new type of carriage", "railroad's own freight", "carriage for the railroad only" (discussed in Division VI herein) work the justification. For, after the terminology is applied, the same facts and conditions remain, and the same policy of the Act and language of the Act applies to them. Nor is there any inherent right of the railroad to economy that may as well be accomplished by motor carriers, as by a railroad subsidiary, and that if achieved by the subsidiary will actually be paid for by the other carriers. does not now, and in peace could not, account for the supposed inherent right, for there is no war need that is served by trading freight cars and coal for twice as many trucks, motors, much rubber, gasoline and oil and keeps idle many independent truck units with probability of increase in numbers as the motor carriage competition is accelerated by the arrival of the subsidiary.

The only inherent right of rail carriers to motor carriage certificates is represented by the "grandfather" clause. Otherwise, where public convenience and necessity is not

established by substantial proof the certificate is not justified, and special presumptions may not properly be indulged to supply omission of proof.

V

THE COMMISSION HAS THE POWER TO REQUIRE COORDINATION BETWEEN THE RAIL AND. MOTOR CARRIERS, BUT IF IT HAD NOT, NO INFERENCE WOULD ARISE, UNDER THE STATED POLICY OF THE ACT, THAT THE ABSENCE OF SUCH, AUTHORITY REFLECTED A STATUTORY INTENT THAT RAIL CARRIERS COULD SUBSTITUTE ABSORPTION FOR COORDINATION

It is possible that the holdings of the Commission, that it has no authority to require coordination between rail and motor carrier, have led to the reasoning by which rail carriers desiring to enter the motor carrier field have been held to be entitled to do so regardless of the adequacy of the existing motor carrier service and the state of competition.

The Commission's conception of its authority for coordination appears to be more limited than is warranted by the policy of the Interstate Commerce Act and decision of this Court. United States v. Pennsylvania Railroad Company, 65 S. Ct. 471, 473.

Coordination between the Railroad and one or more independent carriers in the field required only the consent of the railroad in this particular case. Its stations and docks suitable for the applicant's use were equally suitable for the other motor carriers. The other motor carriers were willing to adjust their schedules to meet the needs of the railroad. They were certified common carriers with idle equip-

ment awaiting additional business; and were able and ready and anxious to acquire additional business and avoid further competition in that more-than-adequately-filled motor carrier field. Any claim of the railroad that the existing motor carriers were less desirable for the purpose of the railroad because they would be competing carriers. is a claim that could be made against all coordination between competing carriers. There is nothing in the record to indicate that the claim has significance beyond that of like claims which may be expected constantly to appear in involuntary coordination and which have been insufficient to prevent the operation of the policy of the Act and the exercise of the authority of the Commission. There could be little operation of law if the expected dissatisfactions incident to its application were to be considered sufficient reason to refuse to give it application.

This Court, in United States v. Pennsylvania Railroad Company, 65 S. Ct. 471, said:

"There is no language in the present Act, which specifically commands that railroads must interchange their cars with connecting water lines. (Page 473).

"The 1940 Transportation Act is divided into three parts, the first relating to railroads, the second to motor vehicles, and the third to water carriers.

"The interrelationship of the three parts of the Act was made manifest by its declaration of a 'national transportation policy of the Congress to provide for fair and impartial regulation of all modes of transportation subject to the provisions of this Act, so administered as to recognize and preserve the inherent advantages of each."

"Congress further admonished that call of the provisions of this Act shall be administered and enforced with a view to carrying out the above declaration of policy.' * *

"This policy cannot be carried out as to Seatrain's interstate carriage unless railroads interchange their cars with it.

"The 'inherent advantages of the service' would be lost to the public without railroad car interchange.

"If rail carriers are permitted to choose the particular boat lines with which they will establish through routes and joint rates, they will be able to dictate who shall operate upon the water and who shall not, for a boat which is accorded a monopoly of the through rail-and-water traffic will soon be able to drive its competitors out of business." (Page 474.)

In the present case the railroad seeks to interpose a new motor carrier, controlled by it, as a substitute for co-ordination with existing carriers. If it may do this, it and other railroads will be able to continue the practice which, as disclosed by the Commission cases cited in Appellants' briefs, is largely responsible for the new, extensive and growing competition of the railroad, through subsidiary motor carriers systems, in the motor, carrier field. The ultimate consequence of this practice appears to be that contemplated in the paragraph last above quoted.

But assuming that there were no authority for coordination of rail and motor carrier service or facilities, such absence of power could, under the declared policy of the Act, be construed as an implied authority to rail carriers to obtain by engagement in the motor carrier field what the law under such assumption would prefer that they not have, even by regulated coordination.

The "integration" of all modes of carriage into a national

system of transportation does not imply single ownership or control of the system. "Coordination between carriers" does not imply consolidation or control of carriers and extension of control of one carrier over other carriers. Such merger and extension of control are contemplated only in the particular circumstances and under the conditions and standards provided for by the Act.

VI

THE RESTRICTIONS OF THE ORDER WERE NOT EFFECTIVE FOR THEIR STATED PURPOSE AND DO NOT SUSTAIN THE ORDER

The motor carrier service in the particular field and on the particular proposed routes was considered to be entirely adequate and the evidence showed it to be adequately if not too highly competitive.

The grounds upon which the Commission justified its order, as against such facts, were that the service of the applicant would be limited to handling of merchandise in substitution for train service; the "traffic in question" had been handled by the railroad; the service would be limited to auxiliary or supplemental service so as to insure that it would not be competitive with existing motor service (R. 11 and 12.)

The restrictions imposed on the applicant to serve the need of existing carriers for protection against additional competition, limited the applicant to the routes for which it applied and to the points it designated, which were stations on the railroad; and further so limited the applicant, that it could not transport from Grand Rapids entirely to Fort Wayne, or from Fort Wayne entirely to Grand Rapids; and could not render service not "auxiliary to or supplemental of" the rail service of the railroad.

There was no proof and no possibility of proof of what the "traffic in question" would be other than that the railroad expected to solicit actively and get what business it could for the carrier; and there was no limitation in the order to solicitation of freight from former shippers of the railroad or present shippers or to freight to be carried in part by rail. The applicant is authorized by the grant to carry any and all freight which the railroad can obtain by solicitation for carriage by rail and motor conjunctively and by motor alone, from any city and station point north of Fort Wayne to any other city or point north of Fort Wayne including the northernmost point of the routes or in excess of 500 miles in one general direction.

So far as it appears from any definition of dictionary or decision of the Commission, the terms auxiliary or supplemental are not limitations at all or at least not of any definable restrictive consequence.

In Southern Pacific Co., Control of Valley, Motor Lines, Inc., MC-F-2073, 39 M. C. C. 441, where auxiliary and supplemental service was considered, the Commission said:

"However, the meaning of the phrase 'Auxiliary and supplementary to train service,' as sometimes formerly used in acquisition cases has never been defined as to precisely what limitation of the operating authority was intended by those words. "Usually such evidence (evidence showing how such services could and would be used in various ways) has related to motor-carrier operations in combination and in coordination with the railroad's operations, resulting in expedited service, and savings for the railroad, but no condition has heretofore been imposed in acquisition cases limiting the transportation authorized solely to transportation in combination with the railroad or the railroad's freight or preventing the motor-carrier operations and service being made directly available

to the shipping public apart from and in addition to the railroad's service. The only definite restriction on the operating authority which was imposed in the Barker case and later cases has been designed to confine the motor-carrier operations acquired to the territory of the railroad through limiting the rights so as to authorize service only at stations on the railroad. Although. at times, a condition formerly was sometimes included in acquisition cases to the effect that the service to be rendered should be 'auxiliary and supplementary' to the railroad's service, there has been no indication in the reports that such condition was intended to prohibit rendition of all motor-carrier service directly for the shipping public under the operating rights in addition to, in substitution for, and in lieu of, the parent railroad's service, or to restrict the operation solely to one in combination with the railroad's operation; nor is it our understanding that it has been so construed by the carriers. In other words, evidence upon which affirmative action has often been based, and the finding made that the resulting service would be auxiliary and supplementary to that of the railroad, has been based upon motor-carrier operation in addition to, in substitution for, and in lieu of, the railroad's operation, as well as upon an operation in combination with the railroad."

If the railroad should fail to solicit any business for the applicant and the applicant solicited none, or if the independent carriers are successful in retaining all the shipper business they presently have and obtaining all that might be expected to accrue of new business, which is business the railroad disclosed its intention to solicit and which it, or so far as the order is concerned, the applicant may solicit, then the competition may not harm the existing carriers, but if the railroad can successfully solicit, as is its avowed intention, it is a potential competitor for carriage by motor car of all freight between, to and through all permissible points on the routes.

The potentiality of the grant for increase of competition in the motor carrier field is the test of the efficacy of the restrictions. As disclosed the restrictions have relatively little efficacy, since admittedly only two motor carriers cover all or nearly all the routes and the others, in the main are limited by their present grants along such routes as much as the applicant can be.

Recurring to definitions, "auxiliary" seems to mean supporting, cooperating, subsidiary and in a somewhat subordinate sense. "Supplemental" means serving to supply what is lacking; added to supply what is wanted. These definitions, from Webster's Dictionary, seem as broad and indefinite as the Commission has found the terms to be in the case last above quoted. The terms in fact are so broad as not to amount to limitations of grants at all but rather to amount to grants.

The limitations of the words are not substantial limitations on any competition by the applicant, which in the situation here can and very well may be, for all that appears in the record and from all that knowledge of normal acquisitive instinct may reveal, a definitely harmful and a possibly destructive competition for at least some of the present motor carriers.

There is more of significance in the failure of the Commission to impose a substantial limitation of motor carriage to freight of rail origin or termination, than there is of limitation in the so-called restrictions imposed.

ACTUAL COMPETITIVE EFFECT OF PROPOSED OPERATION UPON EXISTING MOTOR CARRIERS WAS NOT CONSIDERED BY COMMISSION

The Commission found that "it did not appear that the restricted service would be directly competitive or unduly prejudicial to the operations of any other motor carrier." (R. 11.) True, there is an implication in the language employed that some measure of indirect competition with the operations of other motor carriers might prevail, a concession which the applicant itself, however, refused to make in its application, wherein it was stated in Exhibit C (b) that "applicant has no knowledge of any other motor carrier operating in the territory covered by this application, with whose operations the service herein proposed would be competitive." (R. 65.) If the finding of the Commission and the knowledge of the applicant are slightly contradictory, they are much less so than the following excerpts from the joint brief of appellants, The Willett Company of Indiana, Inc., and the Pennsylvania Railway Company:

On page 20 of the brief there appears this statement: "At the same time, in order to insure that the railroad will not use its or its subsidiary's motor vehicles to engage in competition with the general over-the-road service of existing independent motor carriers, the Commission has in such cases attached conditions designed to limit the proposed substituted service to service which will be auxiliary and supplemental to the railroad's service and to prevent the railroad or its motor carrier subsidiary from engaging in general over-the-road truck operations."

On page 21 opposite appears this statement: "This action by the Commission is clearly in accord with the applicable provisions of the Act and in furtherance of the Congressional policy declared therein. That policy contemplates, and the Commission's action in this case will promote, the development of an improved and better coordinated transportation system and will encourage healthy competition.

It may be noted too that the argument that existing motor carriers can not render the proposed service as well as the applicant, is apparently based on the theory that the existing motor carriers are competing carriers and hence not to be best depended upon by the railroad.

If the Commission means, by the use of the term "not directly competitive" that the applicant in rendering the service will only be the hand-maiden of the Pennsylvania Railroad, that as such hand-maiden it will refrain from soliciting business for itself, that it will file no tariffs, collect no freight charges from the shipper or receiver, maintain no terminals or agencies in its own name, then the letter, though not the essence, of its finding may be warranted by the evidence upon which it is based. It is stated also, as a factual basis for the finding that the "railroad has been and is transporting the traffic in question" and the conclusion is drawn that the proposed service is merely in substitution for the service now rendered by the railroad.

Is it not pertinent to observe that references to "business now carried" and "traffic now transported" are only relative so far as their application to present and future transportation is concerned! There is nothing more intangible than tomorrow's traffic whether by rail or highway, by water or air.

"Railroad's traffic" or "traffic of the railroad" and "railroad's freight" as employed in the proceedings before the Commission to import a kind of continuing proprietorship by the railroad over future shipper business, and also employed to indicate that the applicant carrying such supposed traffic would not be in competition with other carriers, have no existence in legal or factual ense. Any traffic which may be carried by one or two or more competing rail and motor carriers is the bag of none but game for each until bagged, and each day has its separate game and bag.

May it be expected that the Pennsylvania Railway will refrain from entering actively and aggressively into garnering for the applicant, all of the business which can be secured for carriage over the highway between the points on every route described in the application and that this powerful two-in-one combination will not become directly and aggressively competitive with the presently certificated motor carriers now rendering service to and from these competitive points?

It was said in Mannington v. Hocking Valley Ry. Co., 183 Fed. Rep. 133, 150, that 'competition as between rail-toads necessarily relates to transportation.' The same rule applies, of course, to competition between carriers of any class. The fact that the business is secured by the Penasylvania Railway and all financial transactions relative thereto as well as the details of billing and rate making are managed by the parent company are not the factors which determine the competitive relations between the railroad and its subsidiary on the one hand and the presently authorized motor carriers on the other hand, Transportation is the determining factor, and one or a dozen or a hundred trucks hauling general commodities

over the public highways under a Pennsylvania Railway bill of lading are engaged in exactly the same business as one or a dozen or one hundred of the trucks of the Norwalk Truck Line Company or of any other regularly authorized motor carrier operating over such public highways.

One cannot read the declaration of National Transportation Policy, and the other provisions of the Motor Carrier Act without reaching the conclusion that in the enactment of the Statute, including its amendments, Congress did not have in mind the creation of a well regulated system of highway transportation which, after much development, would by and with the approval of the administrative authority delegated to supervise its operation be subjected to the threat of extinction by a process of progressive infiltration of a highway transportation system owned and operated by the railroads.

It should be obvious to the most casual observer that if the steady-progress of grants of this character continue the time is not far distant when practically every rail line in the country will have its "supplementary and auxiliary" motor truck systems, owned and operated by itself. What such a situation will mean to the regular motor carrier industry is graphically illustrated by reference to Exhibit 2 (R. 424), filed by the applicant in the hearing before the joint board. This exhibit, while intended primarily to designate the routes proposed to be utilized by applicant, shows the network of rail lines which serve the general territory included within the limits of lower Michigan, northern Ohio, northern and central Indiana, and the eastern portion of Illinois, including the city of Chicago.

In discussing the so-called safeguards, which the Commission has attempted to incorporate in its order to prevent "expansion into or encroachment upon service of

other motor carriers, Counsel for the Commission at p. 25 of Appellant Commission's brief comments as follows:

"But running throughout all of these cases is shown the consistent policy on the Commission's part to foster and encourage this improved form of service but at the same time to set safeguards against an expansion to a point where it might compete destructively with the highway service of the independent motor earriers. A cursory examination of the reported cases exhibits this policy."

In using the term "cursory" counsel has perhaps unintentionally but nevertheless correctly, described the type of examination which would warrant a conclusion that the safeguards referred to will accomplish the purpose which counsel assumes their mission to be. "Cursory" is defined by Webster as "hasty", "slight", "superficial", "careless." A deeper, more searching analysis of the matter will disclose the fallacy of such a conclusion.

The grant of the certificate permits the applicant to engage in unrestricted common carriage, for the public, of general merchandise to, from and between the fifty or more permissive cities and towns on the specified routes. It is the potentiality of the grant, not the declared, or supposed intention of the railroad, that defermines the cognizable competitive status. An actual or supposed intention not to solicit business, which would include inferentially an intention not to permit the rail carrier to solicit independent business for the applicant, a suggested intention that no shipments would be accepted by the applicant if in as quantity equal to a carload-lot, or that the applicant would not solicit or procure someone to solicit business for it outside the intimated field, are all mere intentions in futuro, and within the volition of the railroad and the applicant. And such volition is legally commensurate with the broad-



est possible grant, unless the grant is specifically restricted. Intentions of such character do not and cannot be treated as restrictions or as factual or legal bases for the determination of any essential fact to support the grant of the certificate.

VIII

THE RECOGNITION OF A NEW MODE OF MOTOR CARRIAGE AND A NON-STATUTORY STAND-ARD IS NOT WITHIN THE AUTHORITY OF THE COMMISSION

Some railroads prior to the Act of 1940 utilized motor transportation for terminal purposes and short hauls of 15 or 20 miles to points otherwise without service and perhaps to some other points with other service.

Nothing can be deduced from such use or the fact that the Act did not specifically authorize or specifically, in terms, take note of the short service. As to terminal use there was no question. If the short service was in violation of the Act the continuance of the violation created no precedent. If Congress intended to disregard it, it can not be conceived to have significance worthy of attention within the broad purpose and policy of the act.

However, this is not a case of terminal service, or otshort service. It is a case in which the carriage contemplated is extensive in mileage and in quantity. More than that it is a case reflecting the potentialities of encroachment by rail carriers, by 500 mile installments, on the motor carrier field. Willett company to service 25 routes; which if as long as those here involved, would cover 1,750 miles. The Commission found that this grant would round cut the applicant's service of Pennsylvania rail stations within the western region. (R. 7.) It is known from the Commission decisions that the Willett system is not the

only motor carrier system serving the Pennsylvania in like auxiliary and supplemental manner.

Such expansion needs no new definitions to justify it if the statutes warrant it, and a designation of the service as "new type" will not justify recognition of it without statutory warrant.

It is obvious that there is no new mode of carriage involved. Long before the Act motor carriers served rail carriers, and carriage begun by truck terminated by rail, and freight originating by rail terminated by truck. The only thing new in the joint carriage or use of two carriers to transport freight, is the relation of the railroad companies in acquiring the motor carriage end of the business. The name in which freight is carried does not affect the nature of the carriage. Ownership of rail and motor carrier by one or more than one does not alter the two modes or destroy their separate identity. Rail carriage is rail carriage while on rails, motor carriage is motor carriage while on trucks. A passenger traveling by bus half way to San Francisco by bus and half by rail is not a new and hovel individual, he is just a passenger who when in'a bus is a bus passenger and when on a train is a train passenger, and this would be true if it owned both the bus and train, or if another did.

The argument of the Commission brief that the mode is new and different and subject to a different standard or criteria and that it antedated the present Act and must have been tacitly approved by Congress, is not more persuasive than the claim that water carriage is not water carriage if it is to be transferred to rail ultimately or comes from rail and it is not even motor carriage if the hand of the rail owner touches it but is something new, though it may begin, continue and end on truck.

The question is not whether the carriage is of a new type. The question is, whether there is anything in rail ownership or control of motor carrier service used conjunctively in part with rail service which would justify the grant of a certificate to a rail carrier nominee when there is adequate, willing and able motor carriage service in the field available to the public and the rail carrier? Another basic question is also involved, in principle; viz.: is there anything in the nature of the service or in the nature of the Act which would justify duplication of facilities and equipment and double consumption of oil, gasoline, rubber and steel, when a subsidiary of a railroad is applicant but which would not justify a grant to a new independent carrier for the purpose?

If these discriminations are to be applied, there should be warrant for it in the Act. The Commission has not that power of legislation required to fix new standards. Nothing in the policy of the Act, the broad purpose of it or the closest definitions of it, suggests that certificates of public convenience and necessity are to be granted under certain standards of requirements when an independent applicant appears and by another standard when other applicants appear.

The order is conscious of this discrimination and relects it. It can not be said from an examination of the evidence or the findings that the elements which constitute public convenience and necessity appear in the record or have been applied in the Commission's rationalization.

To sustain the order, the evidence and the findings should show the basis of this grant to be within the intendment of the statute. This is not accomplished by strain to find something new and different, that will justify an unorthodox application of the statutory standard or the adoption of a new and unauthorized standard. It is not accomplished by a finding, wholly without evidence that existing certified carriers, equipped and willing and able to render the proposed kind of service (which some of them are now rendering) can not render as well as public convenience and necessity require or as well as the applicant.

IX

CONCLUSIONS

The decree of the District Court is well sustained by the record and should be affirmed.

Respectfully submitted,

FRED I. KING, CLAIR McTURNAN.

Counsel for Appellee.

11 N. Pennsylvania Street,

Indianapolis, Indiana,

APPENDIX

Pertinent Findings of the District Court and Conclusions of Law

The plaintiffs in this suit are motor carriers who are competitors of the above-named applicant with respect to the operations authorized by the proposed certificate and associations of motor carriers.

At the hearing plaintiff introduced in evidence a certified copy of the record before the Interstate Commerce Commission. This was all the evidence in the case.

The operations proposed are motor carrier operations which would be competitive with existing motor carrier service. The railroad, however, refused to make use of any of the existing lines. The applicant's proof concerned an alleged improvement in railroad service. No proof was made or offered by the applicant or presented in evidence that present highway common motor carrier transportation service by duly certificated carriers operating in interstate or foreign commerce and serving the points proposed to be served by the applicant was or would be inadequate to serve the public need therefor. Proof was presented before the Commission by the plaintiff and other protestants concerning the adequacy of existing common motor carrier service. There was no substantial evidence to prove public convenience and necessity.

Conclusions of Law

Upon the above and foregoing Special Findings of Fact, the Court now states its Conclusions of Law, as follows, to-wit: I

The Court has jurisdiction of the subject matter and of the parties in this cause of action.

H

The applicant did not meet the statutory requirements and the Interstate Commerce Commission failed to exact from applicant, as a railroad subsidiary, the requisite proof to establish public convenience and necessity.

III

There was no substantial evidence to support the order of the Interstate Commerce Commission that public convenience and necessity requires the issuance to applicant of a certificate of public convenience and necessity authorizing operations by motor vehicle as a common carrier of property over the routes involved, and the order is, therefore, illegal and void and should be permanently enjoined.

R. pp. 44, 45, 46.

EXCERPTS FROM ACT

Sec. 203 (a) (14) as amended, Transportation Act of 1940.

"The term 'common carrier by motor vehicle' means any person which holds itself out to the general public to engage in the transportation by motor vehicle in interstate or foreign commerce of passengers or property or any class or classes thereof for compensation, whether over regular or irregular routes, except transportation by motor vehicle by an express company to the extent that such transportation has heretofore bee subject to Part I, to which extent such transportation shall continue to be considered to be and shall be regulated as transportation subject to Part I."

Sec. 203 (a) (14) Motor Carrier Act 1935.

"The term 'common carrier by motor vehicle' means any person who or which undertake, whether directly

or by a lease or any other arrangement, to transport passengers or property, or any class or classes of property, for the general public in interstate or foreign commerce by motor vehicle for compensation, whether over regular or irregular routes, including such motor vehicle operation of carriers by rail or water, and of express or forwarding companies, except to the extent that these operations are subject to the provisions of Part I."

Section 217 (a), Part II of the Interstate Commerce Act.

"Every common carrier by motor vehicle shall file with the Commission, and print, and keep open to public inspection, tariffs showing all the rates, fares, and charges for transportation, and all services in connection therewith, of passengers or property in interstate or foreign commerce between points on its own route and between points on its own route and between points on its own route and points on the route of any other such carrier, or on the route of any common carrier by railroad and/or express and/or water when a through route and joint rate shall have been established."

Section 219 of Part II of the Interstate Commerce Act as amended by Public Law 558, 77th Congress, Sec. 3, approved May 16, 1942, and by Public Law 703, 77th Congress, 2nd Session, approved August 7, 1942.

"The provisions of section 20 (11) and (12) of Part I of this Act, together with such other provisions of such part (including penalties) as may be necessary for the enforcement of such provisions, shall apply with respect to common carriers by motor vehicle with like force and effect as in the case of those persons to which such provisions are specifically applicable."

Section 20 (11) of Part I of the Act referred to in Section 219 of Part II, supra.

"That any common carrier, railroad or transportation company subject to the provisions of this part re-

ceiving property for transportation from a point in one State or Territory or the District of Columbia to a point in another State, Territory or District of Columbia, or from any point in the United States to a point in an adjacent foreign country shall issue a receipt or bill of lading therefor, and shall be liable to the lawful holder thereof for any loss, damage, or injury to such property caused by it or by any common carrier, railbad, or transportation company to which such property may be delivered or over whose line or lines such. property may pass within the United States or within an adjacent foreign country when transported on a through bill of lading. * * * And provided further, That for the purposes of this paragraph and of paragraph (12) the delivering carrier shall be construed to be the carrier performing the line-haul service nearest to the point of destination, and not a carrier performing merely a switching service at the point of destination: And provided further, That the liability imposed by this paragraph shall also apply in the case of property reconsigned or diverted in accordance with the applicable tariffs filed as in this part provided."

Transportation Act of 1940 (54 Stat. 899): (All emphasis supplied.)

POLICY.

"It is hereby declared to be the national transportation policy of the Congress to provide for fair and
impartial regulation of all modes of transportation
subject to the provisions of this Act, so administered
as to recognize and preserve the inherent advantages
of each; to promote safe, adequate, economical, and
efficient service and foster sound economic conditions in
transportation and among the several carriers; to encourage the establishment and maintenance of reasonable charges for transportation services, without unjust discriminations, undue preferences or advantages,
or unfair or destructive competition practices; to cooperate with the several States and the duly authorized
officials thereof; and to encourage fair wages and equi-

table working conditions; all to the end of developing, coordinating, and preserving a national transportation, system by water, highway, and rail, as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense. All of the provisions of this Act shall be administered and enforced with a view to carry out the above declaration of policy.

CONSOLIDATION.—CONTROL

- "Sec. 5. (2) (a) It shall be lawful, with the approval and authorization of the Commission, as provided in subdivision (b)—
- their properties or franchises, or any part thereof into one corporation for the ownership, management, and operation of the properties theretofore in separate ownership; or for any earrier, or two or more carriers jointly, to purchase, lease, or contract to operate the properties, or any part thereof, of another; or for any carrier, or two or more carriers jointly, to acquire control of another through ownership of its stock or otherwise; or for a person which is not a carrier to acquire control of two or more carriers, through ownership of their stock or otherwise; or for a person which is not a carrier and which has control of one or more carriers to acquire control of another carrier through ownership of its stock or otherwise; or for a person which is not a carrier and which has control of one or more carriers to acquire control of another carrier through ownership of its stock or otherwise; or
- "(b) Provided. That if a carrier by railroad subject to this part, or any person which is controlled by such a carrier, or affiliated therewith within the meaning of paragraph (6), is an applicant in the case of any such proposed transaction involving a motor carrier, the Commission shall not enter such an order unless it finds that the transaction proposed will be consistent with the public interest and will enable such carrier to use service by motor vehicle to public advantage in its operations and will not anduly restrain competition.

CERTIFICATE—PUBLIC CONVENIENCE AND NECESSITY

"Sec. 206 (a) Part II. Except as otherwise provided in this section and in section 210a, no common carrier by motor vehicle subject to the provisions of this part shall engage in any interstate or foreign operation on any public highway, or within any reservation under the exclusive jurisdiction of the United States, unless there is in force with respect to such carrier a certificate of public convenience and necessity issued by the Commission authorizing such operations:

"Sec. 207 (a). Subject to section 210, a certificate shall be issued to any qualified applicant therefor, authorizing the whole or any part of the operations covered by the application, if it is found that the applicant is fit, willing, and able properly to perform the service proposed and to conform to the provisions of this part and the requirements, rules, and regulations of the Commission thereunder, and that the proposed service, to the extent to be authorized by the certificate, is or will be required by the present or future public convenience and necessity; otherwise such application shall be denied: Provided, however, That no such certificate shall be issued to any common carrier of passengers by motor vehicle for operations over other than, a regular route or routes, and between fixed termini, except as such carriers may be authorized to engage in special or charter operations."

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CHARLES ELMORE OROPLEY

IN THE

SUPREME COURT OF THE UNITED STATES

Остовев Тевм, 1944

No. 507

The INTERSTATE COMMERCE COMMISSION, the WILLETT COMPANY OF INDIANA, INC., and the PENNSYLVANIA RAILROAD COMPANY,

Appellants,

VS.

HARRY A. PARKER, Doing Business as PARKER MO-TOR FREIGHT, REGULAR COMMON CARRIERS CONFERENCE OF THE AMERICAN TRUCK-ING ASSOCIATIONS, INC., Et Al.,

Appellecs.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF INDIANA

SUPPLEMENTAL BRIEF FOR APPELLEE, NOR-WALK TRUCK LINE COMPANY

FRED I. KING,
CLAIR MCTURNAN,
1008 Odd Fellow Building,
Indianapolis 4, Indiana,
Counsel for Appellee,
NORWALK TRUCK LINE COMPANY.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

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The INTERSTATE COMMERCE COMMISSION, the WILLETT COMPANY OF INDIANA, INC., and the PENNSYLVANIA RAILROAD COMPANY,

Appellants.

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Appellees.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES
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SUPPLEMENTAL BRIEF FOR APPELLEE, NOR-WALK TRUCK LINE COMPANY

SUPPLEMENTAL STATEMENT

Active solicitation of business would be engaged in by Pennsylvania Railroad Company for carriage of freight by rail-motor or by motor. (R. 80-81, 372-373.) Shipper witnesses testifying for applicant expressed a preference for rail transportation on long-distance shipments, while utilizing present motor carrier facilities in varying degrees for the shorter distances between points included within the routes described in the application. (R. 270, 309.)

Motor carrier service was highly competitive in the territory proposed to be served with daily service. (R. 9-10, 444, 460, 517, 593, 656, 657, 659-660, 714-715.)

CORRECTION OF ERROR IN THIS APPELLEE'S PRINCIPAL BRIEF'

The last paragraph, p. 22, of said principal brief should read as follows:

But assuming that there was no authority for coordination of rail and motor carrier service or facilities, such absence of power could not, under the declared policy of the Act, be construed as an implied authority to rail carriers to obtain by engagement in the motor carrier field what the law under such assumption would prefer that they not have, even by regulated coordination.

APPLICATION OF ADDITIONAL AUTHORITIES

The additional authorities cited in this supplemental brief pertain (1) to Division I (p. 11) of this Appellee's principal brief; (2) to Divisions III and IV (pp. 16-20) of principal brief, and (3) to Division V (p. 20) of principal brief. (The supplemental numbers herein correspond to the numbers of the divisions of argument in this Appellee's principal brief.) (All emphasis supplied unless otherwise noted).

SUPPLEMENTAL I

In Pick-up of Livestock in Illinois, Iowa and Wisconsin, 248 I. C. C. 385 (1942) the Commission designated certain terminal areas surrounding railroad shipping points within which the railroads might employ motor trucks in picking up live stock for delivery to a specified railroad station without securing authority from the Commission for such an operation. The order provided, however:

"For any truck operations outside of what we find to be terminal areas herein, the railroads must apply for and obtain certificates of convenience and necessity or enter into joint rates with authorized common-carrier truckers."

In a dissenting opinion in the above case Commissioner Porter quoted as still applicable to the status of a "common carrier" the finding of the Commission in Riddle, Dean & Co. v. New York, L. E. & W. R. Co., 1 I. C. C. 594, in which it was stated that:

"A common carrier is under obligation to serve the public equally and justly. He must know no friends and concede no unequal favors. The common carrier has no right to select either goods or customers."

In Substituted Freight Service—Ex Parte 129—232 I. C. C. 683 (1939), the Commission required the publication of all-motor tariffs where all-motor service was to be rendered from origin to point of destination, by including the following provision in its order:

"The suggestions made herein contemplate that the substituted service shall consist of joint rail-motor or joint motor-water service, that is a combination of line-haul movements by both motor and rail or water. Thus they are not intended to cover instances where the service is entirely by motor carrier and no actual rail service is per-

formed or instances where the port-to-port service is entirely by motor vehicle and no actual water service is performed. Where all-motor service is rendered from origin to destination or from port to port, all-motor tariffs published in accordance with part II should be filed to cover." P. 690.

SUPPLEMENTAL III AND IV'

In proposed construction of extension of line of Grand Rapids and Indiana Railway Co. et al., 145 I. C. C. 564, 570 (1928), Commissioner Eastman dissenting said:

"I am not in sympathy with the idea that a carrier can have anything resembling a proprietary interest in traffic or that there is any traffic here; for example, which 'belongs' to the Pere Marquette, or can properly be spoken of as 'it's traffic.'"

In Chicago, M., St. P. and P. R., Trustees, Abandonment, 233 I. C. C. Rep. 205 (1939), Commissioner Eastman, in a concurring opinion approving an order of the Commission authorizing abandonment of a branch line in the State of Wisconsin offered this advice to the railroads: "In considering the problem presented by many branch lines under the conditions of today, the railroad managements may well give close attention, also, to the possibilities offered by new types of motive power better adapted to economical, flexible, and convenient service than the steam locomotives now in use. While it does not appear that a change in motive power would now save the branch here in question, it is not unlikely that there are other lines where such a change could be made to much advantage. The particular gas-propelled unit which was considered at the further hearing of this case is, of course, only one of several such devices which are on the market." Id. p. 218.

SUPPLEMENTAL V

In Passenger Fares Between District of Columbia and Nearby Virginia, 256 I. C. C. 768, 776 (1944) the Commission held:

"In view of circumstances described, effective exercise of the authority expressly conferred upon us to regulate bus fares necessarily involves some regulation of the Transit Company's street car fares, insofar as they apply to the transportation considered." * *

Accordingly, we hold that we have jurisdiction to require the application of the fares herein found reasonable to the combined bus-street car operations of Transit Company and to those operations and the bus operations of the Virginia Lines.

"In any event, we are of the opinion and find that application of the Act to that transportation is, in the language of Section 203 (b) (7a), necessary to carry out the national transportation policy."

Respectfully submitted,

FRED I. KING, CLAIR MCTURNAN,

Counsel for Appellee.

11 N. Pennsylvania Street, Indianapolis, Indiana.

SUPREME COURT OF THE UNITED STATES.

Nos. 507-8.—OCTOBER TERM, 1944.

Interstate Commerce Commission, The Willett Company of Indiana, Inc., and The Pennsylvania Railroad Company, Appellants,

507

228.

Harry A. Parker, doing business as Parker Motor Freight, Regular Common Carriers Conference of the American Trucking Associations, Inc., et al.

The United States of America, Appellant,

Harry A. Parker, doing business as Parker Motor Freight, Regular Common Carriers Conference of the American Trucking Associations, Inc., et al. Appeals from the District Court of the United States for the Southern District of Indiana.

[June 18, 1945.]

Mr. Justice REED delivered the opinion of the Court.

These appeals bring here for review a final judgment of the Special District Court which enjoined the enforcement of an order of the Interstate Commerce Commission. The proceedings below and the appeals here were brought under 28 U. S. C. §41(28), §§ 43-48 and § 345. The report of the Commission appears under the title Willett Co. of Ind., Inc., Extension—Fort Wayne-Mackinaw City, 42 M. C. C. 721. The district court did not file an opinion.

The applicant, the Willett Company, is a wholly owned, common carrier by motor, subsidiary of the Pennsylvania Railroad Company. Previous to this application it held motor carrier operating rights for some twenty-five routes which paralleled lines of the Pennsylvania Railroad at other points than those covered by this application. Fort Wayne was included. Willett sought to secure from the Commission in this case certificates of convenience and necessity for seven additional routes extending along the lines of the Pennsylvania Railroad between Fort Wayne, Indiana, and Mackinaw City, Michigan.

The applications were granted after findings that Willett would render service auxiliary to and supplemental of the Pennsylvania's service in the transportation of less-than-carload freight. The service is to be rendered on railroad billings and is to employ gailroad fixed and cierical facilities. The Commission found that Willett's service would be coordinated with the rail service and under railroad supervision. 42 M. C. C. 725; 21 M. C. C. at 407. It also found that the present and future public convenience and necessity required those motor carrier operations.

In accordance with the policy of the Commission in granting certificates to railroad motor carrier affiliates to improve the service of the railroad, the Commission limited the carrier to service which is auxiliary to or supplemental of the rail service of the Pennsylvania. It forbade service to "any point not a station on a rail line of the railroad," and took steps to keep the Commission informed of the contractual arrangements between Willett and the Pennsylvania.

While the routes paralleled the lines of the Pennsylvania in northern Indiana and the southern peninsula of Michigan, the authorization to Willett forbade the transportation by applicant as a common carrier of any shipments from Fort Wayne, Indiana, to Grand Rapids, Michigan, or through or to or from more than one of said points. The purpose of this limitation was to restrict Willett to transportation truly supplemental or auxiliary to the rail traffic. The two cities are break-bulk or key points. Less-than-carload freight comes to or leaves them in carload lots. When a mixed carload reathes one of these key points, the contents are distributed to the smaller, intermediate points of destination as way-freight by "peddler" cars. The Willett Company seeks to take over this "peddler" work and not to do over-the-road trucking. Such motor-rail coordination has proven successful in improving service and reducing carrier costs.

As a further assurance that Willett might not inadvertently have received privileges beyond the Commission's intention to grant, a right was reserved by the Commission to impose such further specific conditions as it might find necessary in the future to restrict Willett's operation "to service which is auxiliary to, or supplemental of, the rail service."

The operation of the order of the Commission was enjoined by the district court because there was no substantial evidence support the order of the Commission that public convenience and necessity required the issuance of a certificate to Willett. The district court said in the findings of fact that there was no proof that the present highway, common motor carrier transporution service by certificated carriers was or would be inadequate serve the public need. The appellants, of course, contest here the soundness of the district court judgment.

The Interstate Commerce Commission insists that its order authorizing the issuance to Willett of the certificates of convenience and necessity for the specified routes is valid. It bases its contention on the statutory provisions which authorize the Commission to act in regulation of motor carriers and asserts its compliance with them. Under the Interstate Commerce Act, part II. Sec. 206(a), 49 Stat. 551, no motor vehicle subject to the act may operate on the highways without a certificate of public convenince and necessity. Section 207(a) provides for issuance of the certificate on application, if the proposed service "is or will be required by the present or future public convenience and necessty." No other provisions are here involved. The entire subsection appears below. A finding of public convenience and necessity was made, 42 M. C. C. at 726, but that ultimate finding must have been based on the proper statutory criteria and must have had the necessary factual findings to support it.

Public convenience and necessity is not defined by the statute. The nouns in the phrase possess connotations which have evolved from the half-century experience of government in the regulation of transportation. When Congress in 1935 amended the Interstate Commerce Act by adding the Motor Carrier Act, it chose the same words to state the condition for new motor lines which had been employed for similar purposes for railroads in the same act since the Transportation Act of 1920, § 402 (18) and (20), 41

¹⁴⁹ Stat. 551-52:
"Sec. 207. (a) Subject to section 210, a certificate shall be issued to any malified applicant therefor, authorizing the whole or any part of the operations covered by the application, if it is found that the applicant is fit, villing, and able properly to perform the service proposed and to conform to the provisions of this part and the requirements, rules, and regulations of the Commission thereunder, and that the proposed service, to the extent to be authorized by the certificate, is or will be required by the present or future public convenience and necessity; otherwise such application shall be denied: Provided, however, That no such certificate shall be issued to any common carrier of passengers by motor vehicle for operations over other than a regular route or routes, and between fixed termini except as such carriers may be authorized to engage in special or charter operations."

Stat. 477. Such use indicated a continuation of the administrative and judicial interpretation of the language. Cf. Case v. Los Angeles Lumber Co., 308 U. S. 106, 115. The Commission had assumed, as its duty under these earlier subsections, the finding of facts and the exercise of its judgment to determine public convenience and necessity. This Court approved this construction. Ches. d. Ohio Ry. v. United States, 283 U. S. 35, 42. Cf. Gray v. Powell, 314 U. S. 402, 411-12. The purpose of Congress was to leave to the Commission authoritatively to decide whether additional motor service would serve public convenience and necessity. Cf. Powell v. United States, 300 U. S. 276, 287. This. of course, gives administrative discretion to the Commission, ef. McLean Trucking Co. v. United States, 321 U. S. 67, 87-88, to draw its conclusion from the infinite variety of circumstances which may occur in specific instances. The disputants, here, do not clash over the power of the Commission to determine the need for the new service or that it will serve the public convenience and necessity. The evidence is ample and uncontradicted that delivery by motor of less-than-carload freight to way stations is a more adequate, efficient and economical method for railroads than by "peddler" car. They join issue on the Commission's determination as to the carrier which will render that service. Shall it be by the railroad through the use of its trucking subsidiary or by the existing common carriers by motor?

The National Transportation Policy has recently been authoritatively summarized by Congress. That declaration requires administration so as to preserve the inherent advantages of each method of transportation and to promote 'safe, adequate, economical and efficient service.' Such broad generalizations, while

^{2 54} Stat. 899:

[&]quot;It is hereby declared to be the national transportation policy of the Congress to provide for fait and impartial regulation of all modes of transportation subject to the provisions of this Act, so administered as to recognize and preserve the inherent advantages of each; to promote safe, adquate, economical, and efficient service and foster sound economic conditions in transportation and among the several carriers; to encourage the establishment and maintenance of reasonable charges for transportation services, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices; to cooperate with the several States and the duly authorized officials thereof; and to encourage fair wages and equitable working conditions;—all to the end of developing, coordinating, and preserving a national transportation system by water, highway, and rail, as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense. All of the provisions of this Act shall be administered and enforced with a view to carrying out the above declaration of policy."

well expressing the Congressional purpose, must frequently produce overlapping aims. In such situations, the solution lies in the stancing by the Commission of the public interests in the diflerent types of carriers with due regard to the declared purposes of Congress. Cf. I. C. C. v. Inland Waterways Corp., 319 U. S. 671, 691 : United States v. Pennsylvania R. R. Co., No. 47, this term, slip opinion, p. 3....

When Congress directed that the act should be administered to preserve the inherent advantages of each mode of transportation it is abundantly clear that it was not intended to bar railroads from the operation of off-the-rail motor vehicles. In 1938 when committee hearings were being held to consider amendments to the Motor Carrier Act, 1935, Mr. Eastman explained the difference in opinion as to whether or not railroads should acquire motor carriers.3 Section 213(a) of the 1935 act specifically regulated acquisition of motor carriers by railroads. Provision for such acquisitions appear now in Section 5 of the Interstate Commerce Act, 54 Stat. 905. See McLean Trucking Co. v. United States, supra. Section 202(e)(1) of the 1940 Interstate Commerce Act, part II, as amended, withdraws railroad operation of motor carriers in terminal areas from the scope of motor carrier egulation and leaves such operations under part 1.4 Railroads

³ Hearings before a subcommittee of the Committee on Interstate Commerce, United States Senate 75th Cong., 3d Sess. on S. 3606, p. 23:
"The reason for that proviso was that at the time when this act was under

consideration by your committee, there was a feeling on the part of many that rairoads, for example, ought not be permitted to acquire motor carriers at all. It was pointed out, in opposition to that view, that there were many tases where railroads could use motor vehicles to great advantage in their operations, in substitution for rail service, as many of them are now doing. Many railroad men, for example, feel that the operation of way trains has become obsolete; that the motor vehicle can handle such traffic between small gations much more economically and conveniently than can be done by a may train; and the motor vehicles are being used in that way by many railmads. The same is true of many terminal operations. The motor vehicle is a much more flexible unit than a locomotive switching cars, and it can be used to great advantage and with great economy in many railroad operations.

[&]quot;For that reason, something of a compromise was reached between those two opposing views, and it was provided that a railroad could acquire a wotor carrier if it could make special proof that the transaction was not only consistent with the public interest but would promote the public interest and would also promote the public interest in a special way, namely, by enabling such carrier other than a motor carrier to use service by motor vehicle to Public advantage in its operations. And a further finding was required, that the acquisition will not unduly restrain competition."

⁴⁵⁶ Stat. 300, Sec. 2:

[&]quot;(e) Notwithstanding any provision of this section or of section 203, the Provisions of this part , . . shall not apply-

[&]quot;(1) to transportation by motor vehicle by a earrier by railroad . subject to part I, or by a water carrier subject to part III, or by a freight

6

may, therefore, in appropriate places operate trucks. However, since the preservation of the inherent advantages of motor carriers is of equal importance with efficiency under the national transportation policy, the Commission must weigh the needs of the railroad against disadvantages to the motor carriers to find the balance of public convenience and necessity in determining whether to grant a railroad application for motor operation where these certificates are required. Cf. Texas v. United States, 292 U.S. 522, 530.

This the Commission did in its findings and conclusion. It said:

"The motor-carrier service proposed by applicant, operated inclose coordination with the railroad's service, will effectuate a reduction in cost, and will result in an increase in efficiency in the transportation over the routes herein considered, which will inure to the benefit of the general public. Furthermore, it does not appear that the restricted service would be directly competitive or unduly prejudicial to the operations of any other motor carrier.

"42 M. C. C. at 726.

In support of this statement the evidence showed that Willett served, similarly and satisfactorily, other localities along the Pennsylvania lines in Ohio, Indiana and Illinois. The coordination of Willett's line-haul method of operations with the rail service has been explained. The existing schedules of protestants do not fit into the needs of the projected service. Common management of railroad and trucks gave promise of better cooperation than would be obtained by arm's-length contracts or agreements. While the evidence shows that there were operating truck lines in the area which individually could serve all the way stations by seeuring extensions to their present routes, it also shows that no motor carrier is now in a position to render this complete service. Cf. Kansas City S. Transport Co., Inc., Com. Car. Application, 10 M. C. C. 221, 232. The Commission on this evidence had a basis to conclude that a railroad subsidiary offered the most satisfactory facilities for making less-than-carload deliveries to way-stations.

forwarder subject to part IV, incidental to transportation or service subject to such parts, in the performance within terminal areas of transfer, collection, or delivery services; but such transportation shall be considered to be and shall be regulated as transportation subject to part I when performed by such carrier by railroad, as transportation subject to part III when performed by such water carrier, and as transportation or service subject to part IVs when performed by such freight forwarder;"

See Conference Report, H. Rep. No. 2832, 76th Cong., 3d Sess., Section 17(B), p. 74.

The contention of appellees, protestant motor carriers, is that since no evidence was offered as to the inadequacy of the presently duly certificated motor carriers to serve the railroad's need, there was a failure of proof as to convenience of and necessity for a new motor truck operation in the territory. Public convenience and necessity should be interpreted so as to secure for the Nation the broad aims of the Interstate Commerce Act of 1940. Cf. New England Divisions Case, 261 U. S. 184, 189; I. C. C. v. Railway Labor: Assn., 315 U. S. 373, 376-77; United States v. Lowden, 308 U. S. 225, 230; Texas & N. O. R. Co. v. Northside Belt Ry. Co., 276 U. S. 475, 479. In protestant's view a certificate of convenience and necessity should not be granted to railmads for motor truck operation when existing motor carriers are capable of rendering the same service. Appellants take the position that this precise is me need not be decided in this case. They look upon the application as asking for authority to improve "an existing service." We think that it was for a motor service to improve an existing rail service. Consequently, the issuance of the certificate is subject to all the requirements of any other application for a certificate for operation of motor lines. Since, however, on adequate evidence the Commission found that the motor service sought was of a different character from the existing motor service and not directly competitive or unduly prejudicial to the already certificated motor carriers, 42 M. C. C. 725-26, we hold that the Commission had statutory authority and adminis. trative discretion to order the certificate to issue. The public is entitled to the benefits of improved transportation. Where that improvement depends in the Commission's judgment upon a unifed and limited rail-truck operation which is found not "unduly prejudicial" to motor carrier operations, the Commission may authorize the certificate even though the existing carriers might arrange to furnish successfully the projected service.

Certificates of the general character of the one proposed by the Commission for Willett have been granted heretofore.⁵ The motor service was not the normal over-the-road type but restricted to

The Commission's brief, Appendix B, lists 94 opinions dealing with truck

movement of rail freight.

⁵ Pennsylvania Truck Lines, Inc.—Control—Barker, 1 M. C. C. 101, 1137 M. C. C. 9. Similar finding was made in Illinois Central R. Co. Common Carrier Appl., 12 M. C. C. 485; Galf, M. & N. R. Co. Common Carrier Appl., 18 M. C. C. 721; Missouri Pac. R. Co., Extensions of Operations—Illinois, 19 M. C. C. 605; Willett Co. of Ind., Inc., Extension—Ill., Ind. and—Ky., 21 M. C. C. 405; Pacific Motor Trucking Co. Common Carrier Appl., 34 M. C. C. 249, 322, par. 4.

services auxiliary or supplemental to the rail service. In order to restrict motor carriers, which were operated by railreads to this coordinated service, the Commission customarily inserted a provision in the order granting the application that the motor shipments must have prior or subsequent movement by rail. E.g. Kansus City S. Transport Co., Inc., Com. Car. Application, 10 M. C. C. 221, 240. The rail carriers pointed out, however, that this restriction interfered with the efficiency of their operations, since commodities might be offered them at one way-station for transportation to another way-station within ordinary motoring distance. In such a case a way-freight train would be required. It was to meet this situation that the key-point or break-bulk rule, which is employed here, was developed. Kansas City S. Transport Co., Inc., Com. Car Application, 28 M. C. C. 5, 9, 11, 22 (par 3), 25 (App. B).

This key point requirement is one factor of differentiation between this certificate and the normal over-the-road motor certificate of convenience and necessity. Other differentiations are found in the limitation of service to rail station points and the condition that the Commission reserved the right to impose such other requirements as might be found necessary to restrict the rail subsidiary to coordinated rail service instead of permitting general competition with motor carriers in over-the-road service.

It is, of course, obvious that opportunity exists for limited encroachment upon the over-the-road business of the existing motor carriers. A shipper from one way-station to another station on the same railroad within the permitted key point limitation may use the railroad motor carrier instead of the motor carrier. Free pickup and delivery service may extend the competition to the limits of the territorial boundaries of the railroad terminal areas and give a further advantage to the railroad where the motor carrier does not furnish the same service. If the Commission

⁶ I. C. C. Local Freight Tariff, Rules, Charges and Allowances for the Pick-Up and Delivery Service on Less Than Carload Freight, Issued January 2, 1942, effective February 6, 1942, p. 9.

[&]quot;Item No. 30 Territorial Boundaries. (a) Except as otherwise specifically indicated in Section 2, Pick-up or Delivery service will be confined within the corporate limits of cities or towns; at points not having corporate limits, within a radius of one mile of carrier's freight station."

See also Pick up and Delivery in Official Territory, 218 I. C. C. 441, 445: dissent, 483-84; Pick-up of Livestock in Illinois, Iowa and Wisconsin, 238 I. C. C. 671; 248 I. C. C. 385, 391, 397; 251 I. C. C. 545; Morgain Forwarding Co., Pick-up and Storage, 258 I. C. C. 547, 771; Empire Carpet Corp. v. Boston & M. R., 258 I. C. C. 697. Also see, Section 202(e) of part II, Interstate Commerce Act, 54 Stat. 920, 56 Stat. 300.

later determines that the balance of public convenience and necessity shifts through competition or otherwise, so that injury to the public from impairment of the inherent advantages of motor transportation exceeds the advantage to the public of efficient rail transportation, the Commission may correct the tendency by restoration of the rail movement requirement or otherwise.

Administrative discretion rests with the Commission to further improvements in transportation. The Interstate Commerce Act contains no provision by which the Commission may compel nonrail motor carriers to coordinate their road service with rail service or may compel rail carriers to coordinate their service with motor carriers.7 When in railroad applications for coordinated motor service the Commission finds public convenience and necessity for such motor service on evidence of transportation advantages to shippers and economy to the rail carriers, cf. Texas v. . United States, 292 U. S. 522, 530, it is in a position to determine by its administrative discretion whether the projected service may be better rendered by the railroad or existing motor carriers. In the absence of power to compel coordination between the modes of transportation and in the presence of the probable gains in operative efficiency from unified management, we think the Commission, in view-of the limitations on the railroad's motor service, is entitled to conclude that the public will be better served by the rail operation than by use of the available motor carrier facilities. The alternative to the existence of this discretion is that the language of the Interstate Commerce Act, part II, forbids the granting to railroads of a certificate of convenience and neces-

^{7 10} M. C. C. 235-36:

[&]quot;We are without jurisdiction to compel coordinated service between carriers by rail and carriers by motor vehicle. It could only be accomplished through the medium of through routes and joint rates and we have no power to require their establishment. It follows that any such plan must, be dependent on voluntary cooperation. While protestants say that they are willing to entertain proposals, they have not developed a plan nor do they suggest what general form it might take.

[&]quot;Upon the evidence, therefore, we are persuaded that coordinated service through the voluntary cooperation of all or some of the protesting motor carriers is not here practicable, and that the "useful public purpose" which the proposed new operation will serve cannot be served as well by existing lines or carriers. It remains to be determined whether, in accordance with the definition of 'public convenience and necessity' in the Pan-American case, [1 M. C. C. 190], 'it can be served by applicant with the new operation or service proposed without endangering or impairing the operations of existing carriers contrary to the public interest.'

sity for the operation of motor trucks, under specially limited certificates, when there are certificated motor carriers, independent of railroad authority or supervision, with whom arrangements for the service might be made by the rail carriers. There is no such prohibition in terms. Any such implication is negated by the discretion to grant certificates conferred on the Commission by the Act.

Protestants, the appellee motor carriers, point out that under this interpretation in every case of an application by a rail carrier or its wholly owned subsidiary, for a certificate of convenience and necessity to operate a motor line to render service at way-stations, the Commission will have power, under facts and with Mmitations in the certificate, previously described, to grant the certificate. This is true. It must be expected, however, that the Commission will be as alert to perform its duty in protecting the public in the maintenance of an efficient motor transportation system as it is in protecting that same public in the successful operation of its rail system. The Commission is trusted by Congress to guard against the danger of the development of a transportation monopoly. 49 U. S. C. § 5(2)(a) and (b). It has the duty to preserve the inherent advantages of each mode of transportation.

Appellees raise here an objection to the failure of the Commission to reopen the case to hear evider e on the bias of the railroad witnesses. No valid reason for failure to bring out the alleged bias at the trial is suggested.

We pass also without further discussion the appellees' complaint of material error in the refusal to produce the contract between the Pennsylvania and Willett at the hearing. It does not seem material in view of our conclusions. The Joint Board directed that the contract be filed as a "late exhibit."

Reversed.

SUPREME COURT OF THE UNITED STATES.

Nos. 507 and 508 .-- OCTOBER TERM, 1944.

Interstate Commerce Commission, The Willett Company of Indiana, Inc., and The Pennsylvania Railroad Company, Appellants,

Harry A. Parker, Doing Business as Parker
Motor Freight, Regular Common Carriers Conference of the American Truck-

ing Associations, Inc., et al.

The United States of America, Appellant, 508

Harry A. Parker, Doing Business as Parker Motor Freight, Regular Common Carriers Conference of the American Trucking Associations, Inc., et al. Appeals from the District Court of the United States for the Southern District of Indiana.

[June 18, 1945:]

Mr. Justice Douglas, dissenting.

Sec. 207(a) of the Interstate Commerce Act authorizes the issuance of a certificate to a common carrier by motor vehicle if the proposed service "is or will be required by the present or future public convenience and necessity." But the present decision allows the Commission to construe the statute as if "rail-road convenience and necessity," rather than "public convenience and necessity," were the standard.

I can find in the Act no indication whatsoever that railroad applicants for a motor vehicle certificate are to be considered any more favorably than any other type of applicant. Yet it is plain that this decision permits just that. For if any applicant, other than a railroad affiliate were before the Commission with an application for a certificate to serve this precise territory, it would have to show that existing transportation facilities were

inadequate to serve the needs of the public efficiently.1 No such showing has been made here. None has been attempted.

That necessity is sought to be avoided by holding that the motor carrier service to be rendered is "auxiliary to or supplemental of rail service." If, as the Commission at first required (Kansas City Southern Transp. Co., 10 M. C. C. 221), this motor earrier service was restricted to goods which had a prior or subsequent rail haul; the service might properly be designated as an auxiliary or supplemental one. But the Commission changed its position and withdrew that condition. Kansas City Southern Transp. Co., 28 M. C. C. 5. The key-point condition was substituted. Between those points the railroad will operate like any motor carrier. The service which it seeks to render is not a combined rail-and-truck service. As the Commission states in its report in the present case, "The railroad, through its subsidiary, merely seeks the substitution of a more efficient for a less efficient means of service." This "substituted" service differs from the adequate independent motor carrier service already existing only in its being under railroad control. In that respect and in that respect alone is the service of a new and different character.

The Commission justifies that "substitution" of service on the grounds of the operating convenience of the railroad and a re-That is a standard of "railroad" not duetion in its costs. 'publie' convenience. Would it be thought for a moment that motor carriers could obtain authority to build a new competing railroad by any such standard of "motor carfier" convenience?

Whether it is wise policy for the railroads to enter and dominate this field is neither for us nor the Commission to decide. If the railroads are to be given this preferred treatment when they seek to substitute motor carrier service for rail service, the authority should come from Congress, not this Court. Meanwhile, we should, be alert to see to it that administrative discretion does not become the vehicle for reshaping the laws which Congress writes.

¹ Norton Common Carrier Application, 1 M. C. C. 114; C & D Oil Company Contract Carrier Application, 1 M. C. C. 329; Carr Contract Carrier Application, 2 M. C. C. 263, 269; Irven G. Saar Common Carrier Application, 2 M. C. C. 729; Merrill & Hamel, Inc., Common Carrier Application, 8 M. C. C. 115, 117; Boyles & Luten Common Carrier Application, 8 M. C. C: 593; White : Circle Line Common Carrier Application, 16 M. C. C. 516.

II

If the railroad company was acquiring an existing motor carrier to render this service, the Commission could approve the acquisition only if it found, among other things, that the acquisition would "not unduly restrain competition". 49 U. S. C. § 5(2) (b). See McLean Trucking Co. v. United States, 321 U. S. 67. This provision was inserted so as to protect the motor carrier industry from the domination of other types of carriers which "might use the control as a means to strangle, curtail, or hinder progress in highway transportation for the benefit of the other competing transportation." 79 Cong. Rec. 12206.

The same standard should be applied whether the railroads enter the motor carrier field by acquisition of existing facilities or by establishment of their own motor carrier affiliates. The potentialities for abuse may be as great in one case as in the other. Railroads, like other business enterprises, are subject to the anti-trust laws except as Congress has created exemptions for them. Georgia v. Pennsylvania R. Co., 324 U. S. —. And the anti-trust policy is one of the components of the public interest which the Commission is supposed to protect in the transportation field. McLean Trucking Co. v. United States, supra.

· The preservation of healthy competitive conditions must therefore be an ingredient of "public convenience and necessity" which the Commission is under the duty to determine in issuing certificates under § 207(a). Certainly the effect on competition looms large when one type of carrier seeks to enter another field of transportation. The Commission paid lip-service to that policy when it said in the present case that the restricted service to be rendered by this railroad affiliate would not appear to be "directly competitive or unduly prejudicial to the operations of any other motor carrier:" But where is the evidence to support that finding? I do not find it. It is suggested that there can be no competition because the railroad now has the business. But the railroad is not restricted to business which it now has. Between the key-points it is entitled to any and all business which it can get. Every future movement of freight will be the subject of competition. If, as assumed, the present railroad service is poor as compared with the proposed new motor carrier service, a new and important, competitive element will certainly be introduced. The railroad

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wants this broad certificate so it can better compete with existing motor carriers. If the railroad really wants a purely auxiliary service, let the certificate be limited to commodities which have a prior or subsequent rail haul. But it is not so conditioned. The railroad is entering the motor carrier field and rendering a pure motor carrier service. If the policy of Congress is to be honored, there must be a finding supported by evidence that competition will not be unduly restrained. On this record no such finding has been or can be made.

Mr. Justice BLACK and Mr. Justice RUTLEDGE join in this dissent.